

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 04-10525-WGY

DYNAMIC MACHINE WORKS, INC.,)
 Plaintiff,)
)
 VS.)
)
MACHINE & ELECTRICAL)
CONSULTANTS, INC.,)
 Defendant.)

DEPOSITION OF VENANZIORO FONTE,
a witness called on behalf of the Defendant,
taken pursuant to the provisions of the Federal
Rules of Civil Procedure, before Susan L.
Prokopik, Registered Merit Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the offices of Dynamic Machine
Works, Inc., 12 Suburban Park Drive, Billerica,
Massachusetts, on Monday, September 20, 2004,
commencing at 10:18 a.m.

MAGGIOLI REPORTING SERVICES, INC. (781) 356-2636

1 APPEARANCES:

2
3
4 LAW OFFICES OF JACK BRYAN LITTLE, P.C.

5 (By Jack Bryan Little, Esq.)

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7 North Andover, Massachusetts 01845

8 for the Plaintiff.
9

10
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12 (By Keith R. Jacques, Esq.)

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16 for the Defendant.
17

18 ALSO PRESENT:

19
20 Norman Crepeau
21
22
23
24

1 I N D E X

2 Witness Direct Cross Redirect Recross

3 VENANZIORO FONTE

4 (By Mr. Jacques) 4

5

6 E X H I B I T S

7 Exhibit No. Page

8

9 1 Defendant's Notice to Take Oral
Deposition of Ven Fonte 11

10 2 12/23/02 document 40

11 3 1/3/03 document 44

12 4 Purchase order #13436 46

13 5 1/13/03 letter 54

14 6 Invoice #7844 57

15 7 2/27/03 E-mail 59

16 8 Memo 71

17 9 Memo 71

18 10 6/26/03 letter 74

19 11 7/8/03 letter 95

20 12 Accuracy Inspection report 81

21 13 12/9/03 letter 96

22 14 12/11/03 letter 106

23 15 Document 115

24 16 Affidavit of Venanzioro Fonte 123

1 P R O C E E D I N G S

2

3 VENANZIORO FONTE

4 having been satisfactorily identified and duly
5 sworn by the Notary Public, was examined and
6 testified as follows:

7

8 DIRECT EXAMINATION BY MR. JACQUES:

9 Q. Mr. Fonte, could you please state your full name
10 for the record?

11 A. First name is Venanzioro. That's V as in Victor
12 E N A N Z I O R O. Last name is Fonte.
13 F O N T E.

14 Q. Mr. Fonte, what is your home address?

15 A. 19 Buckmaster, B U C K M A S T E R, Drive,
16 Sudbury, S U D B U R Y, Massachusetts, 01776.

17 Q. How long have you lived at that address?

18 A. Since 1982.

19 Q. And you're currently associated with the
20 plaintiff in this case, Dynamic Machine Works,
21 Inc.?

22 A. That is correct.

23 Q. And this deposition is taking place in the
24 business' conference room; is that correct?

1 A. That is correct.

2 Q. Could you for the record, what is the address of
3 Dynamic Machine Works?

4 A. 12 Suburban, S U B U R B A N, Park Drive,
5 Billerica, 01821. Massachusetts.

6 Q. How long has Dynamic Machine Works, Inc., the
7 corporation, been in existence?

8 A. Since June, 1973.

9 Q. Prior to June of 1973, was Dynamic Machine Works
10 operating as a noncorporation?

11 A. Did not exist.

12 Q. Okay. Have you been associated with Dynamic
13 Machine Works since June of 1973?

14 A. Yes.

15 Q. You're one of the founding fathers so to speak?

16 A. That is correct.

17 Q. Okay. What is your position at Dynamic Machine
18 Works?

19 A. I am the president.

20 Q. Have you been president since June, 1973?

21 A. Correct.

22 Q. Who are the other officers of the corporation?

23 A. My son Matthew.

24 Q. What is his position?

1 A. Clerk. And possibly treasurer.

2 Q. Anybody else?

3 A. No.

4 Q. Does Matthew, other than serving as clerk or
5 treasurer, does he work for the company?

6 A. That is correct.

7 Q. What is his role in the company?

8 A. He's a manager of market development. Business
9 development or markets development.

10 Q. Was Matthew involved in this particular
11 transaction? You understand when I say "this
12 particular transaction" I'm talking about the
13 purchase of the Johnford lathe from Machine &
14 Electrical?

15 A. He was not.

16 Q. Are you the sole shareholder of the company?

17 A. That is correct.

18 Q. So you're 100 percent shareholder?

19 A. Yes.

20 Q. Could you describe the nature of Dynamic Machine
21 Works' business?

22 A. The company was born as a precision machine shop.
23 And since 1980s, late '80s, we became a
24 flowforming company. Flowforming, F L O W

1 F O R M I N G, which is a metal working process
2 for the production of tubular component, hollow
3 components. Mostly for the missile industry
4 initially but we have spread into other areas.
5 Wherever the cylinders are required.

6 Q. How many employees does Dynamic Machine Works
7 currently have?

8 A. Don't know exact but somewhere between 40 and 45.

9 Q. Do all of those employees work out of this
10 location or --

11 A. That is correct.

12 Q. Have you worked continuously for the corporation
13 since June of 1973?

14 A. Yes.

15 Q. Have you been involved in any other businesses
16 since June of 1973?

17 A. I used to have a smaller company that took care
18 of investments, which is now defunct. The name
19 of the company was World Dynamics Corporation.

20 Q. Were you the sole shareholder of that corporation
21 also?

22 A. That is correct.

23 Q. And when did World Dynamics go out of business?

24 A. I think last year. Closed it. It had been

1 inoperative for a number of years or so.

2 Q. Can you briefly describe for me your educational
3 background from going forward from high school to
4 present, to the present?

5 A. I have an Associate's degree in mechanical
6 technology.

7 Q. When did you receive that degree?

8 A. Wentworth Institute in Boston.

9 Q. What year?

10 A. '69.

11 Q. Between 1969 and 1973, what did you do for work?

12 A. I worked as a junior engineer in a company called
13 Thermoelectron in Woburn, Mass.

14 Q. What were your responsibilities with that
15 company?

16 A. I designed and supervised a group of four or five
17 craftsmen that built draw benches for the pulling
18 of tubes. The purchasing of tubes and also
19 furnaces for the heating of metal.

20 Q. Did you work at that company throughout the
21 period of 1969 to 1973?

22 A. Yes.

23 Q. Okay. Why did you leave that company?

24 A. To start Dynamic.

1 Q. Mr. Fonte, have you ever had your deposition
2 taken before?

3 A. Yes.

4 Q. On how many occasions have you had your
5 deposition taken in the past?

6 A. Once.

7 Q. Can you describe for me briefly the circumstances
8 arising for the necessity of you having your
9 deposition taken?

10 A. It was a legal deposition on some arguments with
11 my father-in-law.

12 Q. When was that deposition?

13 A. 1993, '94. Those years.

14 Q. Did the arguments involve business arguments
15 related to your business as opposed to personal?

16 A. Correct.

17 Q. They were business arguments?

18 A. The two overlapped. There was some arguments
19 about agreements where I had before, which we saw
20 it differently.

21 Q. Other than the litigation back in the early 1990s
22 involving your father-in-law, has Dynamic Machine
23 Works been involved in any other lawsuits?

24 A. No, sir. And it was not involved -- Dynamic was

1 not involved at the time.

2 Q. It was a claim against you personally?

3 A. Right.

4 Q. So since 1973, Dynamic has never been involved in
5 any litigation?

6 A. No, sir. Never.

7 Q. I'm going to -- since 1973 is a long time ago --
8 just go over a couple of ground rules for today's
9 deposition.

10 A. Sure.

11 Q. During the course of the deposition, I may ask
12 you questions that you don't understand. And if
13 you don't understand my question, please ask me
14 to rephrase it and I'll clarify it so we can be
15 on the same wavelength. Okay? If I ask you any
16 questions during the course of the deposition
17 that require a yes or no answer, you need to
18 answer yes or no verbally as opposed to nodding
19 your head or shaking your head. Okay?

20 A. Correct. I understand.

21 Q. And during the course of the deposition, I will
22 try not to interrupt you while you're answering.
23 And if you could let me finish my question before
24 you start answering, that will make the court

1 reporter's job a lot easier. Okay?

2 A. Okay.

3 Q. If you need to take a break at any point during
4 the deposition, just ask me and I'll accommodate
5 you. And the only thing I may ask is that you
6 finish answering the question on the table or the
7 line of questioning before we break. Okay?

8 A. Okay.

9 Q. And if during the course of the deposition I
10 remind you of any of these things, I'm not
11 chastising you. I'm just trying to make the
12 process go as smoothly as possible.

13 A. I understand.

14 Q. Mr. Fonte --

15 MR. JACQUES: Could I have this marked,
16 please?

17 (Defendant's Notice to Take Oral
18 Deposition of Ven Fonte marked Exhibit No. 1.)

19 Q. Mr. Fonte, I'm handing you a document that we've
20 marked as Exhibit 1 and I'll represent to you
21 that that's the notice to take your deposition in
22 this case. Have you had an opportunity to see
23 that before just now?

24 A. Yes.

1 Q. And that deposition notice in addition to
2 requiring you to be here today to testify also
3 asked that you produce at the deposition a series
4 of documents numbered one through four. Is that
5 correct?

6 A. Correct.

7 Q. My understanding from discussions with you and
8 your counsel prior to the deposition is that any
9 documents responsive to that request previously
10 had been provided in connection with the initial
11 disclosure and the one document that was produced
12 at Mr. Crepeau's deposition. Is that correct?

13 MR. LITTLE: That is my belief. If
14 there are other documents that come to my
15 attention, I will provide them to you.

16 Q. But as we sit here today, you're not aware of any
17 documents that haven't been provided to your
18 attorney --

19 A. No.

20 Q. -- that would be responsive to these requests?

21 A. That is correct.

22 Q. Could you identify for me the individuals within
23 your company who have knowledge of this
24 particular transaction, who for the time being I

1 just need their names?

2 A. Kevin McGinley. M G -- excuse me. M C -- excuse
3 me. M C G I N L E Y. John Heymans.
4 H E Y M A N S. And Nicholas -- that's N I C H O
5 L A S. Fonte, F O N T E.

6 Q. Who is Ed Vannah?

7 A. He is now the shop supervisor.

8 Q. Did Mr. Vannah have any involvement in this
9 transaction?

10 A. Difficult. I think you should be more specific
11 with that question. Involvement, he was a shop
12 supervisor so at one point when the machine has
13 come in, he has seen the machine. He has seen
14 what's going on and so on. The purchase order,
15 the contract level, no, he did not.

16 Q. What about any concerns that Dynamic had
17 regarding the operation of the machine? Would he
18 be involved in that process?

19 A. He was from a point where discussions were
20 probably were kept around the shop between
21 engineering and manufacturing. It was the
22 responsibility of engineering to bless the
23 machine. Whether the machine could perform what
24 it was purchased for or not.

1 Q. Would Mr. Vannah have any knowledge regarding
2 either the purchase or the commissioning or the
3 operation or any alleged defects in this machine
4 that any of the other individuals you identified
5 would not have?

6 A. I don't think so.

7 Q. Okay. With respect to Mr. McGinley, how long has
8 he been associated with your company?

9 A. Let's see. The better part of ten, 12 years. He
10 was here. He ran the shop for a number of years.
11 Then left. Actually worked for Norman for a
12 period of time and then he came back here three,
13 four, five years ago. I don't remember.

14 Q. What is Mr. McGinley's current position in the
15 company?

16 A. He acts in a variety of functions but
17 predominantly he is the person responsible for
18 program management. When programs become
19 complex, more than a normal purchase order, he
20 will take care of that. And he's also the
21 procurement person for the company.

22 Q. Okay. And what was his involvement in this
23 particular transaction?

24 A. He pretty much participated in the discussions

1 with me and Norman. I think when John and Nick
2 may have also participated but we certain --
3 Kevin was the guy that wrote the purchase order
4 to Machine & Electrical. If there was any
5 questions that had come up, he was -- he acted as
6 a program manager. Basically he made sure that
7 the purchase orders say the right thing. He
8 said, Sure, the machine came in what it was
9 supposed to come in.

10 If it didn't, he would be the first to
11 come and tell me. Look, Norman called. The
12 machine is not coming in.

13 So there was a point of contact
14 managing the program basically.

15 Q. Would Mr. McGinley have been involved in the
16 discussions surrounding the commissioning and
17 performance of the machine?

18 A. Yes. Of course.

19 Q. Nick Fonte is your son?

20 A. Correct.

21 Q. How long has Nick been involved in the business?

22 A. Full-time, I'm afraid to say but it's got to be
23 six, seven years since he graduated. He's 30 so
24 he graduated -- at least seven years.

1 Q. What was Nick's involvement in this transaction?

2 A. He's the person that -- at that time he was a
3 programmer. He ran the shop. So he had a direct
4 involvement with the knowledge that the
5 machine -- whether the machine could do what we
6 needed to do and the type of work that we have
7 around here.

8 Q. And --

9 A. From the technical point of view.

10 Q. Are Nick and Matthew your only sons?

11 A. Correct.

12 Q. And John Heymans, as I understand, is an engineer
13 with the company?

14 A. Correct. He is engineering manager.

15 Q. Okay. And how long has he been involved in the
16 company?

17 A. Oh, longer than Nick so I don't know. Eight,
18 nine years.

19 Q. And what was his involvement in this particular
20 transaction?

21 A. Analyzing what we got for reports from the
22 commissioning of the machine, drawing, where is
23 the machine going to go, how it's going to fit
24 into the shop and so on. Each one of us had some

1 participation in it in a variety of fashions.

2 Q. Did all four of you -- when I say "all four," I'm
3 referring to yourself, Kevin, Nick and John. Did
4 all four of you have direct contact with Norman
5 Crepeau at Machine & Electrical Consultants?

6 A. On this transaction or generally speaking?

7 Q. Correct. On this transaction.

8 A. I think so. All of us participated somewhere
9 along the line. I probably discussed the
10 purchase order, the specs with Kevin, with
11 Norman. Then I kind of stand back and they start
12 to take over. They start to look at things and
13 details as things arise. But sooner or later
14 because of the lathes and what needed to be done
15 and the commissioning, everyone is participating.

16 Q. Okay. And would Mr. Vannah have had any contact
17 with Norm Crepeau, if you know?

18 A. I don't know.

19 Q. Now, there is a motion for summary judgment
20 that's been filed in this case and there's an
21 affidavit that's been signed by an individual by
22 the name of Jack Grosberg. You're aware of that?

23 A. Yes.

24 Q. Who are the individuals that had contact with Mr.

1 Grosberg during the time period that he was here
2 performing work on the machine?

3 A. I think in a direct contact with him was probably
4 Nick and John. More so than anyone else. I had
5 contact with Jack. I went out and checked on a
6 daily basis how things were progressing. So we
7 all -- and I'm sure Kevin probably did also. I'm
8 not sure about it but chances are he spoke to him
9 to find out what's going on.

10 Q. Has Mr. Grosberg ever performed work on behalf of
11 Dynamic Machine Works other than the work he
12 performed on the lathe which is the subject of
13 this transaction?

14 MR. LITTLE: I would like to clarify
15 that Mr. Grosberg was not working for Dynamic at
16 all. He was employed by your client.

17 MR. JACQUES: Bad question. Let me
18 rephrase the question.

19 Q. Has Mr. Grosberg ever performed work at Dynamic
20 Machine Works other than the work which he
21 performed on this lathe?

22 A. Before or after?

23 Q. On any occasion.

24 A. At any time. Okay. He was here about ten days

1 ago to -- under contract by a different company
2 to come and check things out.

3 Q. What company was he working for on that occasion?

4 A. Phoenix Machinery. I don't know. Phoenix
5 something. Machine Tool. You probably know a
6 little bit better. More correctly. It's a
7 company that rebuilt our flowforming machine. It
8 had to be leveled. We had ground, reground the
9 ways. These are guideways on the machine. Part
10 of the machine. And he had to come in and level
11 everything. And we asked that he'll be the
12 person to come in.

13 Q. So Phoenix would have hired Mr. Grosberg to do
14 the work but you had asked that Mr. Grosberg be
15 the individual that came in to do this work?

16 A. Because we trusted him. I think he's quite
17 capable.

18 Q. Is that the only other occasion that Mr. Grosberg
19 has been --

20 A. Yes. I don't think we had ever met the man
21 before or after that.

22 Q. How long was he here the most recent visit?

23 A. A day. Maybe a day and a half. John and Nick
24 can probably answer that more accurately so --

1 I'm just assuming that. That could be totally
2 wrong but I don't think it was more than a day or
3 two.

4 Q. When he was here most recently working on the
5 other machine -- the free flowing machine I
6 believe you said?

7 A. Flowforming machine.

8 Q. Flowforming machine, did he inspect or do any
9 work on the lathe which is the subject of this
10 lawsuit?

11 A. Did Jack?

12 Q. Right.

13 A. No.

14 Q. Okay. And the lathe that's the subject of this
15 lawsuit is still located within your facility; is
16 that correct?

17 A. That is correct.

18 Q. At any time other than the time period that Mr.
19 Grosberg was performing work on the lathe back in
20 I believe it was November of last year, has he
21 performed any work or inspections on the subject
22 lathe?

23 A. No. The lathe has been moved from where it was.
24 There is nothing to inspect. It's -- it's not on

1 the pavement where it should be. It's just been
2 parked somewhere.

3 Q. How long have you known Norm Crepeau?

4 A. Twenty years? I don't know. A long time.

5 Q. Okay. During the time period that you have known
6 Mr. Crepeau, has it been in connection with his
7 involvement with Machine & Electrical
8 Consultants?

9 A. Correct.

10 Q. Did you know Mr. Crepeau before his association
11 with Machine & Electrical Consultants?

12 A. I think so. During TekRep. It was a company
13 that Norman used to work for way back. `
14 T E K R E P.

15 Q. Do you know his business associate, Fabien
16 Crepeau?

17 A. Yes.

18 Q. Fabien Dube. I'm sorry.

19 A. Yes.

20 Q. How long have you known Mr. Dube?

21 A. I only met him once. Three years ago. I think
22 when we were doing the flowforming machine. We
23 went out to lunch once.

24 Q. Did you have any conversations or correspondence

1 with Fabien Dube involving the subject lathe?

2 A. Not that I can recall.

3 Q. Were all your dealings in connection with the
4 lathe with Norman, with Norman Crepeau?

5 A. As far as I can recall.

6 Q. Do you recall having conversations with anyone at
7 MECI other than Mr. Crepeau with respect to the
8 lathe?

9 A. I couldn't tell you.

10 Q. As you sit here, you don't have any recollection
11 of speaking to anyone other than Norman Crepeau?

12 A. In speaking about the problems, it was most
13 likely Norm. Okay?

14 Q. Okay.

15 A. If I spoke to someone trying to get to Norm, it
16 might have been Fabien. I said, Fabien, things
17 aren't going well here with the lathe.

18 I may have made comments. That's why I
19 can't tell you yes or no on the situation very
20 clearly. It all depends exactly what you're
21 referring to.

22 Q. Okay. As you sit here today, do you have any
23 recollection of having conversations with Fabien
24 Dube regarding any delays in the lathe being

1 delivered to Dynamic?

2 A. No, I do not.

3 Q. Do you have any recollection of having any
4 discussions with Fabien Dube regarding any
5 concerns that you might have regarding the
6 operation of the lathe?

7 A. No, I do not.

8 Q. And broadening that a bit, as you sit here, do
9 you have any recollection of having any
10 discussions with anyone at MECI regarding any
11 delays in the delivery of the lathe?

12 A. No.

13 Q. And do you have any recollection of having any
14 conversations with anyone at MECI regarding any
15 difficulty that you were having with the
16 operation of the machine?

17 A. Well, with Norman.

18 Q. Other than Mr. Crepeau.

19 A. No.

20 Q. How many transactions has Dynamic had with
21 Machine & Electrical Consultants other than the
22 Johnford lathe?

23 A. I'm sure there's been an innumerable amount where
24 they provided service for our machines. Small

1 purchase order and they worked for the hour. I
2 have no idea whether that's 20 or 100 or 200 but
3 for a number of years we have worked together.

4 Q. Both in the sales and service area?

5 A. Correct. We -- I don't remember on the sale. We
6 have refurbished two machines with Machine &
7 Electrical. CNC lathe. That's L A T H E. And
8 one flowforming machine.

9 Q. Throughout this time period, your primary contact
10 at MECI has been Mr. Crepeau?

11 A. Yes. I probably wasn't all involved all the
12 time. There were other people. He probably
13 dealt with John or Nick or -- I was out of it.
14 This is probably the most involved I ever been in
15 any transaction.

16 Q. Okay. Have you ever had any problems or concerns
17 with MECI in the past prior to the issues arising
18 from this lathe?

19 A. There was some issues with CNC lathe that I
20 didn't particularly agree with the way they done
21 work but generally speaking it was a good
22 relationship.

23 Q. At any time did you find them to be dishonest
24 with you in the business?

1 A. No.

2 Q. Did you find them to be unreceptive to your needs
3 or concerns?

4 A. No.

5 Q. Did you find them to be competent and qualified
6 in providing the services that they were
7 providing?

8 A. Yes.

9 MR. LITTLE: May I clarify that those
10 last three questions were prior to this
11 transaction?

12 MR. JACQUES: Yes.

13 Q. Do you have knowledge regarding MECI's reputation
14 in the industry?

15 A. No, I do not.

16 Q. I would like to shift and start focusing on the
17 Johnford lathe. And just so to make matters
18 simpler, rather than refer to it by the HT275G,
19 if you can just agree with me that when we're
20 talking about the Johnford lathe, we're talking
21 about the lathe that Dynamic purchased and that's
22 in its facility now.

23 A. That is correct. Fine.

24 Q. If we move away from that and we talk about some

1 other Johnford lathe, then we will need to
2 clarify that because otherwise we'll assume that
3 we're talking about the lathe that Dynamic
4 purchased and that's located in your facility.

5 MR. LITTLE: Not to quibble but the
6 word "purchase" is one of the issues before the
7 court right now. Our position is the machine was
8 rejected so to the extent you're using the term
9 "purchase," if you're referring to the subject of
10 a purchase order, I'll stop quibbling.

11 MR. JACQUES: That's fair enough. It
12 wasn't a trick question. I wasn't trying to back
13 you in. Okay. We're going home now. We won. I
14 want to make sure we're talking about the same
15 machine when we talk about things.

16 Q. When did Dynamic decide to enter into a purchase
17 order for the Johnford lathe?

18 A. We need to define that there -- the purchase
19 order that purchased so we are clear on that.
20 Okay. The first lathe was a G lathe. 275G
21 model, which was much bigger lathe. And then
22 came the H lathe, which is presently what's here
23 today.

24 Q. Okay.

1 A. So you need to clarify which lathe you're talking
2 about.

3 Q. Let's --

4 A. First one happened December. The second one
5 happened in January.

6 Q. Okay. Let me step back a little bit. At some
7 point in December, 2002, Dynamic began speaking
8 with Machine & Electrical Consultants regarding
9 purchasing a Johnford lathe, correct?

10 A. As I understand you -- I assume you furnished the
11 thing -- you're amassing everything into one.

12 Q. Correct. For the time being.

13 A. Then that probably begun -- the first
14 conversation might have begun in November or
15 beginning of December, 2002.

16 Q. Okay. And why did Dynamic decide to purchase a
17 Johnford lathe?

18 A. We needed another large lathe. We had one large
19 Mazak, M A Z A K, lathe, and we needed a second
20 machine. So we were looking to purchase a second
21 large and long machine for the type of work that
22 we do.

23 Q. Were you looking to purchase a machine that was
24 virtually identical to the Mazak lathe you

1 already had for one that had larger capabilities
2 than the existing lathe?

3 A. We were looking to satisfy the needs that we had
4 at the time, which was -- would have been a lathe
5 such as the Mazak. The original thought, so you
6 are clear in all of this, was to go to 160-inch
7 lathe, which is slightly longer than what we have
8 now. What we had was 120.

9 And when we started to deal with 160
10 inches in length, we thought that maybe we could
11 encompass all of our needs into one lathe because
12 on the horizon there was the possibility of
13 getting the Tomahawk missile launch capsule.
14 That's T O M A W --

15 MR. LITTLE: Tomahawk.

16 T O M A H A W K.

17 A. Right. Correct.

18 And so we started to look at the
19 potential to make this thing that's 21-feet long,
20 to actually get into 21-feet long lathe, which
21 would have satisfied for 98 percent of what we
22 were to do with this thing. And if this contract
23 came along, we would have the lathe.

24 Q. So the existing business that Dynamic had would

1 have been served by a 100 -- the 120-inch Mazak
2 lathe you had or a duplicate of that lathe?

3 A. 160 inches would have been what we were looking
4 for.

5 Q. Okay. And going to a lathe that was 20-feet plus
6 was to accommodate the Tomahawk missile launch
7 capsule potential contract?

8 A. Plus we have always here a need for long pipe.
9 We make 19-, 20-feet long pipes. Sometimes we
10 have to face one end or turn some section with a
11 rollers and the forming haven't done the right
12 thing and it's always a problem.

13 Q. With respect to the Tomahawk missile potential
14 contract, does your company have that contract
15 now?

16 A. No.

17 Q. Is it still a possibility that that contract will
18 be given to your company sometime in the future?

19 A. Very much so but we have kind of pulled back with
20 that. There is a number of issues. One, we
21 don't have the machine and, two, the price of the
22 aluminum has gone up some seven or eight hundred
23 dollars and Raytheon would like us to absorb some
24 of that and we say no.

1 If we had the machine, we would say yes
2 but right now, not in the mood to deal with
3 Raytheon.

4 Q. If we could focus on that contract a little bit.
5 In December, 2002, I take it that you had
6 submitted a bid for that contract; is that
7 correct?

8 A. We have been submitting bids for that contract
9 since 1996.

10 Q. Okay. And Raytheon currently has that contract;
11 is that correct?

12 A. Raytheon is the major contractor.

13 Q. Okay. And --

14 A. We would have done a portion, which is a launch
15 capsule for the missile.

16 Q. Okay.

17 A. Raytheon, it's an ongoing thing. There is an
18 incumbent in California that does those parts
19 right now.

20 Q. At some point you indicated that you pulled back
21 from that contract. When did you make the
22 decision to pull back from that contract?

23 A. This happened this year. There's still
24 conversation going on every month around this

1 contract. I'm just not moving. I'm not doing

2 anything, trying to get a contract right now.

3 Let me put it this way.

4 Q. Okay. And you mentioned that one of the reasons

5 you pulled back from that contract is you don't

6 have a machine with that capability, correct?

7 A. Correct.

8 Q. Is the largest machine that you have on your

9 floor now the 120-inch --

10 A. Correct.

11 Q. -- Mazak?

12 A. Correct.

13 Q. Are you looking to purchase a machine that has a

14 larger capability than the 120-inch Mazak?

15 A. I might if the need comes up.

16 Q. But currently, your customer demands are

17 satisfied by the Mazak machine at 120 inches; is

18 that correct?

19 A. We would like longer machine but it's not a

20 prerequisite. We can work around it by putting

21 things through the spindle of Mazak and holding

22 both sides and doing things. We get away with

23 that. Okay? But it would be desire to have a

24 longer machine.

1 Q. Could you get away with the Mazak if you had the
2 Tomahawk missile launch capsule?

3 A. No.

4 Q. That would require you to have a longer lathe?

5 A. Correct.

6 Q. Could you get away with a 160-inch machine with a
7 Tomahawk missile launch capsule?

8 A. No.

9 Q. It would require a lathe that had capabilities up
10 to 21 feet?

11 A. Correct.

12 Q. In other words, you can't use two and bond it
13 together for the missile launch capsule?

14 A. Correct.

15 Q. The second reason that you gave for pulling back
16 is that the price of aluminum has increased.

17 A. Price of aluminum has gone up about \$800 on this
18 particular part. It's a large casting.

19 C A S T I N G.

20 Q. It's increased by \$800?

21 A. Per unit, correct. Raytheon has been putting
22 pressure that feels that we should absorb some of
23 it. Given the complexity of the part, the fact
24 we don't have a machine to do it, although we

1 have gone to see two machines in Ohio on two
2 different trips that are 30-foot long. Flat bed
3 lathes. Nothing like this. If it comes to that,
4 that's what we will purchase.

5 Q. The two Ohio machines, you say they're 30-feet
6 long machines?

7 A. Yeah. Long -- even longer than these machines.
8 Thirty, 36. I don't remember.

9 Q. Okay. What type of machines are those machines?

10 A. I don't remember the names.

11 Q. Do you know if someone within your company
12 remembers the names, would know the names?

13 A. I'm sure we have files. John probably. Nick. I
14 don't know.

15 Q. And I take it going back to the increased price
16 of aluminum, the \$800 per unit, I take it what
17 we've got is you are committed to a set price and
18 now there's the increase in aluminum and the
19 question becomes do you pay that or does somebody
20 else pay it?

21 A. No, no. We hold our proposals for 90 days so
22 anything after that gets renegotiated again.
23 That's not an issue. The issue is one not having
24 the machine in here. The place is getting very

1 busy. We have bought two large machines since
2 last year so room to move these Tomahawk will
3 cause different issues. So I have to give a
4 strong consideration to get a Tomahawk. We kind
5 of lost momentum when the machine no longer
6 became available to do what we wanted to do.

7 It has kind of cooled us off a little
8 bit so that right now, if Raytheon calls and
9 Matthew comes and see me, rather than normally
10 what I would give him a straight answer, now I
11 say, Let me think about it. After I think about
12 it, I say, Well, let it go.

13 That's the feeling with the Tomahawk.

14 Q. You identified -- you mentioned that you
15 purchased two new machines since you had those
16 discussions with Machine & Electrical with
17 respect to the Johnford lathe. Have those new
18 machines been purchased to replace the Johnford
19 lathe?

20 A. The first one was.

21 Q. Okay. What kind of machine was that?

22 A. Mazak.

23 Q. That's a different machine than the Mazak we have
24 been talking about?

1 A. No. Same identical machine.

2 Q. Duplicate?

3 A. Second machine.

4 Q. Okay. 120 inch?

5 A. Correct. Length. That came within three days

6 when we rejected. Literally. Four or five days.

7 Q. The second machine that you purchased, does it

8 serve any of the same functions that the Johnford

9 lathe would serve?

10 A. Yes.

11 Q. What kind of machine is that?

12 A. Oh, you're talking the one, the third machine?

13 Q. Correct. The third one.

14 A. That's a Daewoo machine. D --

15 MR. LITTLE: Daewoo.

16 A. D A W O O.

17 MR. CREPEAU: D A E W O O. Daewoo.

18 A. Okay.

19 Q. What is the function of that machine?

20 A. It's a turning. CNC lathe. That's a type.

21 That's a metal working process. Metal turning.

22 T U R N I N G.

23 Q. When was the Daewoo purchased?

24 A. Last month. And it just came in last week.

1 Q. Okay. And what is the capability, the length
2 capability of that machine?

3 A. 120 inches with milling capabilities.

4 Q. Is the milling --

5 A. That's turning and milling at the same time.

6 It's a much more complex machine than the other
7 two.

8 Q. Did the Johnford lathe have milling capabilities?

9 A. No.

10 Q. So is the Daewoo in your mind, is it a
11 replacement for the Johnford lathe?

12 A. No.

13 Q. Other than the lack of a machine and the
14 increased price of aluminum and you indicated
15 you're busy, your business is busy right now, are
16 there any other reasons why you're not pursuing
17 the Tomahawk missile launch capsule contract?

18 A. Not really.

19 Q. At any time has anybody from 2002 to the present
20 told you that you wouldn't get that contract if
21 you pursued it?

22 A. I don't understand the question.

23 Q. Well, you say you submit proposals that are good
24 for 90 days.

1 A. Right.

2 Q. I'm assuming what happens is you submit a
3 proposal and either --

4 A. Six months go by before -- so it's just a
5 standard 90-days term that we have -- the
6 validity of our proposal. Raytheon will take
7 four months to address an issue and then they
8 come back. At that point you have the
9 prerogative to bail out to say, No. I need
10 another \$100 or whatever.

11 Q. I guess my question is, since 2002, has Raytheon
12 come back and rejected your proposals or have
13 they simply not been acted upon?

14 A. There has been an issue with the incumbent.
15 Raytheon has been putting pressure on them to
16 come down with a price to meet ours, which is
17 much more attractive to Raytheon. And the
18 incumbent has not -- Raytheon is afraid that if
19 they pull the Tomahawk at this point they might
20 go out of business. So Raytheon is looking for
21 us to help them justify to knock off to absorb
22 some of those \$800 and I'm saying no.

23 And they basically are saying, We'll
24 give you the contract if you just knock off maybe

1 300 out of the 800. I say, No.

2 Mind you, this is \$10,000 part so \$300
3 is nothing. Just my heart isn't there right now.
4 Q. And even if your heart was there and you said,
5 Yes, I'll absorb a portion of the price, there's
6 no guarantee that you would get the contract,
7 correct?

8 A. No. There would be. Well, there's no guarantees
9 in life on anything, right? Certainly not in the
10 business world. But I will have a 98 percent
11 confidence level because it has been going on for
12 several, several years.

13 Q. But you don't know whether the incumbent would
14 actually decide to go forward with the project?

15 A. We drifting into area that it's a very complex
16 issue. The incumbent was a larger shop than we
17 are. Larger company than we are but we're a job
18 shop. They were bought out by Rockwell. So
19 Rockwell jack their price up. Making for them
20 very difficult to remain in business.

21 That is one concern of Raytheon so
22 Raytheon has been knocking on the door
23 periodically and we're like -- Raytheon Summa.
24 S U M M A. That's another company that does this

1 stuff for Raytheon. The launch systems for
2 Raytheon is Summa. So that in a nutshell, Keith,
3 the -- if I wanted the contract, the contract is
4 ours. Literally. I lost the momentum of this
5 thing. There is just so much going on at the
6 shop right now.

7 Last year we worked 24 hours a day for
8 six days since August to this March. Okay?
9 Without really a break. So Tomahawk, yeah, it's
10 very interesting and so on but we doing quite
11 well without it.

12 Q. Okay. Without the Tomahawk contract, does your
13 business have any need for a machine with the
14 length capabilities of the Johnford lathe?

15 A. Sure.

16 Q. But not -- from what I understand, you've looked
17 at machines but to date you haven't felt the need
18 to actually purchase a machine to meet those
19 needs?

20 A. Because we came so close with the Tomahawk that I
21 had to get ready. We had some commitment and
22 some responsibility to what we put down on the
23 proposal and I felt if Raytheon was going to push
24 it -- this is before the increase -- we will have

1 to take it, even though I was trying to dodge it.

2 Q. Okay. But where things currently stand, I take
3 it you're not planning on going forward and
4 buying these machines that you looked at in Ohio
5 because you pulled back from the Tomahawk?

6 A. That is correct.

7 Q. So without the Tomahawk contract, the machines
8 that you have with 120-inch capabilities are
9 sufficient for your needs?

10 A. For now.

11 MR. JACQUES: If you can mark that as
12 2, please.

13 (12/23/02 document marked Exhibit No.
14 2.)

15 Q. Mr. Fonte, I'm handing you a document that we
16 marked as Exhibit 2, which is a document that's
17 dated December 23, 2002 on Machine & Electrical
18 Consultants' letterhead involving the Johnford
19 HT275G heavy-duty turning center. Do you
20 recognize that document?

21 A. Yes.

22 Q. And is that a document that you would have seen
23 and reviewed back in December, 2002?

24 A. That is correct.

1 Q. On the top right-hand of the page is a document
2 -- some printing that says "Original." And do
3 you know whose handwriting that is?

4 A. That's mine.

5 Q. And then looking to page two of that document,
6 there's some handwritten corrections or
7 modifications to that page. Do you know whose
8 handwriting those changes are?

9 A. The one on the right is mine. The one on the
10 left could be Kevin or Nick. I think it's Kevin.

11 Q. Okay. And just so the record is clear, when you
12 talk about "the right," the handwritten changes
13 on the right-hand column is yours and on the
14 left-hand column you believe that might be one of
15 your employees?

16 A. That is correct.

17 Q. And this particular subject, the Johnford HT275G
18 heavy-duty turning center, is that the machine
19 that ultimately was delivered to your business by
20 Johnford?

21 A. No.

22 Q. What machine ultimately was delivered?

23 A. An H machine.

24 Q. So it would be an HT275H?

1 A. Correct. I believe so.

2 No. I don't know. I thought it was.

3 MR. CREPEAU: That's the machine.

4 A. So it's a G. That's fine.

5 Q. Can you describe for me the written modifications
6 that you made on the right side of page two? Can
7 you explain to me what you were looking for with
8 those modifications?

9 A. This was to the best I can recollect just before
10 Christmas. Norman wanted to book the machine
11 before and he and I had some conversations from
12 my home because we shut down between Christmas
13 and New Year. This probably came about then. At
14 that point in reviewing the specifications of the
15 machine, I have made some corrections here.

16 It looks like the OD tool shank size
17 was stated as 1.25 so one and a quarter to one
18 and a half. We needed 02 inches. This is
19 probably boilerplate that they use in providing
20 proposal. And I corrected that. At one inch.
21 The next thing, ID tool shank size. That's an
22 internal diameter. Call for a four-inch split
23 type. And I put down five inches because of some
24 discussions that we had that we needed five inch

1 for this machine. Okay?

2 I corrected it because there had been
3 some discussions during the month of December
4 with Norman Crepeau about the five-inch diameter
5 for this tool rather than what has been stated
6 here has been four inches. So I questioned that.
7 And further down under the page here towards the
8 bottom of page two, looks like the tool
9 statements on this specifications were probably
10 reversed. So I made some arrow markings to
11 correct that.

12 These were almost like notes to myself
13 at the time probably. Once I reviewed this.

14 Q. Okay. Is it fair for me to assume that since you
15 made changes to some of the specifications and
16 not the others that the remaining specifications
17 were satisfactory to you?

18 A. Probably, you know, things like this, I don't --
19 there are certain specifications I don't really
20 understand so it's not my job to review that. I
21 just kind of look at a summary of things.

22 Q. Okay. And when you talked about the
23 specifications that you would have just reviewed,
24 you were referring to the list on page four; is

1 that correct?

2 A. Right.

3 Q. Okay. And on page five, the next page of that
4 document, there's a circle around the pricing and
5 then some additional handwriting. The 295 plus
6 60 equals 355. Do you know whose handwriting
7 that was?

8 A. I believe the circle and the question mark is
9 probably mine. The handwritten 295 for 60 equal
10 355, that could be Kevin. McGinley, that is.

11 MR. JACQUES: Mark that as 3, please.

12 (1/3/03 document marked Exhibit No. 3.)

13 Q. Mr. Fonte, I'm going to hand you a document that
14 we marked as Exhibit 3. That document is dated
15 January 3, 2003. Have you seen that document
16 before today?

17 A. Probably.

18 Q. Okay. And in reviewing the document -- and you
19 certainly can take the time to do that if you
20 would like -- it appears to me that the
21 handwritten changes that you made to the -- what
22 was marked as Exhibit 2 were incorporated into
23 the January 3, 2003 machine specifications.

24 Is that your understanding?

1 A. Looks that way.

2 MR. LITTLE: You're referring to page
3 two.

4 MR. JACQUES: Right.

5 Q. Referring to page two, for example, your
6 employee's changes were made under the
7 parenthetical under "turret"? And then your
8 changes on the right-hand side were incorporated
9 also?

10 A. Correct.

11 Q. And then if we move on to page five, the purchase
12 price was also changed to 355, correct?

13 A. Correct.

14 Q. Is it --

15 MR. LITTLE: 355 meaning 355,000?

16 MR. JACQUES: Correct. 355 would have
17 been a bargain.

18 Q. \$355,000, is that what you understood to be the
19 purchase price for the Johnford lathe?

20 A. Yes.

21 Q. With respect to Exhibit 3, is Exhibit 3 the
22 specifications that were agreed upon between you
23 and Machine & Electrical Consultants involving
24 the Johnford H2 lathe at the time of your

1 entering into a purchase order?

2 A. Yes. But this was followed by something else, I
3 believe.

4 Q. And we'll get to that.

5 A. Yes. That is correct. At this point, this was
6 what we agreed on.

7 Q. Okay.

8 (Purchase order #13436 marked Exhibit
9 No. 4.)

10 Q. Mr. Fonte, I'm handing you a document that's
11 marked as Exhibit 4. And if you can identify
12 that document for me.

13 (Off the record.)

14 A. I believe this document came after but I might be
15 wrong. This document came after Exhibit 3. Just
16 confirming a bunch of things once we got down to
17 the nitty-gritty of selecting more equipment for
18 this lathe because these are just general type of
19 specifications, meaning what is stated on Exhibit
20 3.

21 This basically provides for accessories
22 to the lathe such as chocks and steady rests and
23 things of that nature.

24 Q. Okay. Let me just step back. With respect to

1 Exhibit 4, this is the purchase order that
2 Dynamic provided to Machine & Electrical
3 Consultants for the Johnford lathe and some
4 additional equipment, correct?

5 A. I believe so.

6 Q. What I would like to do is spend a little time
7 going over the purchase order with you. That's
8 not signed by you but it's signed by Kevin
9 McGinley, correct?

10 A. Correct.

11 Q. I'm assuming you authorized Mr. McGinley to sign
12 that purchase order?

13 A. He's authorized. Not this specific one but he's
14 authorized to sign purchase orders.

15 Q. Okay. The first -- I'm going to go by line
16 number.

17 A. Yeah.

18 Q. The first line number involves some chucks for a
19 unit price of \$71,000. Do you see that?

20 A. Yes.

21 Q. Did Dynamic receive those chucks?

22 A. I believe so.

23 Q. Okay. And the description is that one of the
24 chucks was to be installed on the Mazak and then

1 one on the Johnford lathe; is that correct?

2 A. Correct.

3 Q. Do you know whether one of the chucks ever was
4 installed on the Mazak?

5 A. I believe so. I don't get involved with details
6 like that.

7 Q. Okay. There's also a -- you indicated that you
8 -- let me step back. The two chucks that you
9 were purchasing, were those identical chucks?

10 A. I can't tell you that.

11 Q. Do you know if the second chuck, the one that was
12 installed in the original Mazak, has been
13 installed on any other machines on your floor?

14 A. I can't answer that.

15 Q. Who could?

16 A. John and Nick for sure.

17 Q. Do you know whether there's any reason why the
18 second chuck could not be installed, for example,
19 on the second Mazak that you purchased shortly --
20 a while ago?

21 A. We probably did. I don't know.

22 Q. You don't know. Okay. The second line item, the
23 Johnford lathe, that line item represents the
24 down payment for that lathe, correct?

1 A. Yes.

2 Q. And that was paid, correct?

3 A. I think so.

4 Q. The third line item is for the Johnford lathe and
5 that was the first payment, correct?

6 A. The second payment.

7 Q. The second payment.

8 A. Correct.

9 Q. The first payment that theoretically was due
10 after delivery of the machine as opposed to the
11 down payment?

12 A. Correct.

13 Q. And the fourth line item is for the -- what's
14 designated on this purchase order as the final
15 payment for the lathe, correct?

16 A. Yes.

17 Q. With respect to line items three and four, those
18 payments have not been made to Machine &
19 Electrical, correct?

20 A. That is correct.

21 Q. The fifth line item is for an autoblock steady --
22 a steady rest?

23 A. Correct.

24 Q. Do you know if the steady rest was ever delivered

1 to Dynamic?

2 A. It was on the machine, I think. We got installed
3 on the machine and then taken down or something.

4 Q. It was on the Johnford lathe?

5 A. Yes.

6 Q. Okay. Who made the decision to purchase a steady
7 rest in connection with the Johnford lathe?

8 A. Probably John, Nick.

9 Q. What is the purpose of the steady rest?

10 A. To support long parts. All our machines are set
11 up with steady rests because of the nature of
12 parts we do such as long tubes. They need -- you
13 chuck them one end and you support it here while
14 you machine the end.

15 Q. Okay. Some of these questions may appear
16 somewhat ignorant. I apologize for that and I'm
17 not in the business. Are steady rests
18 interchangeable among machines or are they
19 machine specific?

20 A. They're interchangeable as long as they fit the
21 machine. If you -- this one here does not fit
22 the other machine so we had to buy other steady
23 rests.

24 Q. Do you know whether this steady rest fits any of

1 the machines that are currently on your floor?

2 A. It does not. Doors cannot close.

3 Q. And is that because of the size of the steady
4 rest?

5 A. That is correct.

6 Q. Have you removed the steady rest from the
7 Johnford lathe? Not you person --

8 A. I believe so.

9 Q. I understand that question wasn't you personally.

10 A. I understand.

11 Q. Your business. Do you know where the steady rest
12 is located now?

13 A. Probably right next to the machine. If you
14 wanted to see just the machine, we can get in
15 from the side and look at the machines. Do what
16 you want to do. That's okay. Just don't want
17 people running around.

18 Q. When the steady rest was removed from the
19 machine, was that to determine whether it could
20 be used on some of your other machines?

21 A. Probably but I can't -- wrong man to speak about
22 those things.

23 Q. Would John be the proper man to speak to about
24 that?

1 A. John and Nick.

2 Q. The transformer and the \$2,000 for the
3 transformer, I take it that was part of the
4 \$355,000 purchase price for the Johnford lathe?

5 A. Repeat the question.

6 Q. The \$2,000 price that's associated with the
7 Johnford lathe for the transformer, was that part
8 of the \$355,000 purchase price for the lathe or
9 is that over and above the \$355,000, if you know?

10 A. I don't know but it doesn't appear to be if there
11 is a separate charge for \$2,000 here.

12 Q. Is the transformer interchangeable among
13 machines, if you know?

14 A. Probably. The other machines don't need it. If
15 that's what you want to know.

16 Q. Okay.

17 A. It's incorporated into that.

18 Q. Why is the transformer for the Johnford lathe not
19 incorporated into the machines while they are for
20 the other machines, if you know?

21 A. Should ask the manufacturer.

22 Q. You don't know?

23 A. No.

24 Q. What sort of steady rest does Dynamic Machine

1 Works -- what sort of steady rest did Dynamic
2 Machine Works purchase for the Mazak and more
3 recently for the Daewoo, if you know?

4 A. Again, John and Nick can tell you that but it's
5 probably SMW. If we specked it out for this
6 machine, we probably used it in the other
7 machines also.

8 Q. With respect to the steady rest?

9 A. Correct.

10 Q. So it's the same -- SMW refers to the parts
11 manufacturer?

12 A. Correct.

13 Q. So it's the same type of steady rest. It's the
14 size that's an issue with respect to your other
15 machines?

16 A. I believe so. I know that we have bought steady
17 rests of late for the other two machines so
18 obviously they could not fit this steady rest in
19 there. I think there was an issue with the doors
20 closing on both machines.

21 Q. With respect to the various line items, other
22 than the \$29,500 down payment for the Johnford
23 lathe, were any of the other unit prices paid to
24 MECI, if you know?

1 A. I believe we paid for the chucks. It says chucks
2 to be paid net 30 from installation of Mazak so I
3 would imagine we paid for those. We paid the
4 29,5. The autoblock I'm sure has been paid
5 because I remember some of the conversation with
6 Norman about this equipment. It was outside the
7 lathes. The accessories that we paid net 30.
8 And I cannot answer about the transformer so if
9 the transformer came and it was part of the deal
10 with the lathe, that's probably unpaid.

11 MR. JACQUES: Go ahead and mark this as
12 the next exhibit, please.

13 (1/13/03 letter marked Exhibit No. 5.)

14 Q. Let me hand you the marked Exhibit 5, which is a
15 letter from Dynamic to Machine & Electrical
16 Consultants dated January 13, 2003. Have you
17 seen that letter prior to today?

18 A. I believe so.

19 Q. Okay. What was the purpose of that letter as
20 opposed to the purchase order that previously had
21 been provided to Machine & Electrical
22 Consultants, if you know?

23 A. I think this was kind of a recap of what had
24 happened. We made some changes. There had been

1 conversations and so on. This kind of recap in a
2 nutshell to summarize and give a synopsis of the
3 situation.

4 Q. The --

5 A. It confirms it there. The purchase order number.
6 13436. "Dear Norm." On the first line there
7 basically.

8 Q. So it references the purchase order that
9 previously had been submitted to Machine &
10 Electrical?

11 A. Right. Correct.

12 Q. And it confirms that the total machine cost was
13 355,000?

14 A. Correct.

15 Q. And then it also confirms under 1A that the down
16 payment of 29,5 previously had been paid on
17 December 17, 2002, which was the date of the
18 purchase order, correct?

19 A. Correct.

20 Q. Okay. It references that the second payment was
21 going to be in the amount of 148,000. Do you see
22 that?

23 A. Yes.

24 Q. The second payment under the purchase order was

1 for 118,000. Do you know what the \$30,000
2 difference is comprised of?

3 A. No.

4 Q. And then it talks about the final payment being
5 the amount of \$177,500 as opposed to \$147,500.
6 Do you know what caused that discrepancy?

7 A. No.

8 MR. LITTLE: Again, objection to the
9 term "discrepancy."

10 Q. The term "discrepancy" didn't confuse you, did
11 it?

12 A. It didn't scare me either.

13 Q. It wasn't meant to do either.

14 A. You guys -- you lawyers are funny people.

15 Q. You understand the reason I was asking is just
16 whether you knew why on the purchase order it's
17 147,5 and --

18 A. Yes.

19 Q. And the letter it's --

20 A. I don't know. When was the chucks supposed to be
21 paid? I don't know.

22 MR. LITTLE: It was net 30.

23 A. That's all right. I don't think anyone ever
24 picked that up. That's strange. All three of

1 them. Comes to 355. Don't have a calculator.

2 Q. Can we take a break just for a second?

3 A. Sure.

4 (Recess.)

5 (Invoice #7844 marked Exhibit No. 6.)

6 Q. Mr. Fonte, we're returning after a short break
7 and I assume you understand that you are under
8 oath, continue to remain under oath?

9 A. Yes, I do.

10 Q. Okay. Before we took the break, we were talking
11 about the differences between the purchase order
12 numbers and the numbers contained on the January
13 13, 2003 letter, which is marked as Exhibit 5.
14 There's no --

15 MR. LITTLE: Exhibits 4 and 5?

16 MR. JACQUES: Correct. Exhibit 4 being
17 the purchase order, Exhibit 5 being the January
18 13, 2003 letter.

19 Q. There's no dispute that the purchase price for
20 the Johnson lathe was \$355,000, correct?

21 A. To my understanding, yes.

22 Q. Let me hand you what's been marked as Exhibit 6.

23 MR. LITTLE: Thank you.

24 MR. JACQUES: Sure.

1 Q. And I'll represent to you those are two invoices
2 numbered 7844 and 7845. Have you seen those
3 invoices prior to today?

4 A. No.

5 Q. The invoices are for or indicate that they are
6 for the second payment on the Johnford in the
7 amount of 148,000 and the final payment on the
8 Johnford in the amount of \$177,500. You don't
9 dispute that those two payments have not been
10 made by your company to Machine & Electrical or
11 anyone else on its behalf, correct?

12 A. I don't think so. You are correct. They have
13 not been.

14 Q. I understand as part of this transaction one of
15 the things that Dynamic did was lease a Johnford
16 lathe while waiting for this machine to come in,
17 correct?

18 A. Correct.

19 Q. Can you describe for me the type of Johnford
20 lathe that was leased by your company?

21 A. CNC lathe. Standard machine. Standard CNC.
22 That's C as in Charlie, N as in Nancy, C as in
23 Charlie again. Lathe. That's L A T H E.
24 Machine.

1 Q. What were the length capabilities of that
2 machine?

3 A. It was a very small machine. It was a medium
4 size CNC lathe I should say.

5 Q. Bigger or smaller than the existing Mazak you had
6 on the floor?

7 A. Smaller. We had a need at the time to drill and
8 that's all we did with that literally. Just
9 drill. Using it like a drilling machine.

10 Q. To bore out the center of --

11 A. To drill first with the drill bit and then go in
12 there and phase off.

13 MR. JACQUES: Mark this as 7, please.

14 (2/27/03 E-mail marked Exhibit No. 7.)

15 Q. Let me hand you a document which is marked as
16 Exhibit 7, which is a copy of an E-mail from
17 Nicholas Fonte to Norman Crepeau with a cc to
18 you. Have you seen that before today?

19 A. Yes, I have.

20 Q. Okay. The E-mail purports to address some
21 concerns that you have based upon the rental
22 machine; is that correct?

23 A. Correct.

24 Q. And it talks about three different items. The

1 first item being that the screen needs to show
2 the actual feed rate. It goes on to say the
3 rental lathe does not show either. Do you
4 understand what was being addressed there as far
5 as what needed to be incorporated into the new
6 machine?

7 A. Correct. Yes, I do.

8 Q. With respect to that screen, did you understand
9 that when it was communicated to Mr. Crepeau in
10 February of 2003 to be an additional
11 specification that was not part of the original
12 machine specifications?

13 A. I need to understand your question. You're
14 talking about machine specification. We're
15 referring to the 275 machine, not this one.

16 Q. Correct. Correct.

17 A. So you are clear, what all of this means, a lathe
18 is an analogy. It's like a car. If you purchase
19 a car from a dealer, you expect when you go and
20 get the car, the car will have wheels to carry
21 forward. Okay? This is the same situation. A
22 lathe that doesn't tell you how fast you're
23 going, it just -- it's such an anomaly. I never
24 heard it in 35 years a lathe wouldn't show what

1 you're doing. Okay?

2 So that needed to be correct. This was
3 some points that Nick addressed to Norm. The
4 first point was we need to know this stuff. All
5 right? So now, we had had an earlier situation
6 on one of the rebuilds that Norman had done but
7 still today at Dynamic is handicapped by this
8 thing.

9 Q. Is it a rebuild of a Johnford?

10 A. No. It was a Graziano, G R A Z I A N O, lathe.
11 And this machine does not show the thing. The
12 inch per -- I think it shows the feed rate in
13 inches per minute when it should show inches per
14 revolution.

15 Q. I guess my question is, with respect to item
16 number one, did you understand that item to be a
17 modification to the machine that you were
18 purchasing from MECI?

19 A. No. What it's saying is this machine doesn't do
20 it. The machine that we have bought better do
21 it. That's what it's saying.

22 Q. Was it your understanding at that time that the
23 machine that you were buying was supposed to do
24 that?

1 A. Of course.

2 Q. Okay. The second item talks about the rental
3 lathe cannot bring a two-inch bar to center and
4 it indicated that the new machine must bring a
5 five-inch bar to center.

6 A. Correct.

7 Q. Was it your understanding that the specifications
8 which you had been provided with respect to this
9 machine provided that the machine would bring a
10 five-inch bar to center? You can go back and
11 look --

12 A. Do I understand that to be the case?

13 Q. Right.

14 A. That is correct.

15 Q. Okay. And in taking a look or if you could look
16 at Exhibit 3 and show me on that exhibit where it
17 identifies bringing a bar five inch to center.

18 A. We had an agreement with Norm that the machine
19 would do five inches. This is referring to the
20 tool holder, not the capability of the machine
21 doing the five inch to center. This is a tool
22 holder. The ones they provide for the Johnford
23 has a bore with set screws on the top, which we
24 didn't think was adequate so we wanted to split

1 type. Meaning it's cut on the top and it's got
2 side screws that will lock the boring bar to make
3 it vibration free. That's what that is.

4 Q. Okay.

5 A. It's a tool holder and not the capability of that
6 machine going to center. Okay? That's covered
7 on the next one.

8 Q. Okay. So the requirement that the new machine
9 bring a five-inch bar to center was not something
10 that was referenced in the specifications that
11 were provided to you on January 3, 2003?

12 A. Without going through the document but it was an
13 understanding that had been covered a number of
14 times with Norman in here and it was never any
15 question to the point that we needed a five-inch
16 bar given the fact also as you can see that we
17 procured special tool holder for it.

18 So if you buy yourself a tool holder,
19 you obviously have to use a five-inch bar. There
20 was never any question, okay, that that's what we
21 need.

22 Q. With respect to item number three, the chip
23 conveyor, would that require a modification to
24 the specifications that were provided to you in

1 January, 2003?

2 A. It does not really address the specification, I
3 think. Again, it's another analogy with the
4 tires. Okay? The chip conveyor should be
5 adequate for the size of machine. A large
6 machine will cut a lot of metal and as such the
7 chip conveyor must be able to move the metal.

8 Q. Let me ask you. I notice taking a look at the
9 specifications that the particular machine that
10 you were -- the Johnford lathe in this case was a
11 slant bed machine and you indicated early in your
12 deposition that you had looked at two Ohio
13 machines that were flat bed machines?

14 A. This is after this.

15 Q. I understand that. I guess my question is, what
16 is the difference between a slant bed and a flat
17 bed machine, other than the obvious?

18 A. The flat bed looks very much like this table to
19 you. The ways are parallel to the floor. The
20 guideways that hold -- the guideways that provide
21 the accuracy of the machine are parallel to the
22 floor. It makes it for a much easier way to
23 search for accuracy on the machine itself by
24 jacking the screws underneath that.

1 On the slant bed, in the turret which
2 is the carrying tool, turret, the station that
3 holds the carrying tool moves on a carriage along
4 this way parallel to the bed. At any given time,
5 if you have an issue with the accuracy of this
6 machine, you can go and tweak the leveling of the
7 machine to bring the machine into compliance to
8 what you need.

9 And that's usually done if the machine
10 is worn, as guideways are worn, rather than
11 regrind it. You can actually go there and they
12 do wear because a lot of the work is done in a
13 short amount close to the spindle. You can
14 actually play and bring it back into compliance.
15 Maybe messing up something else on the machine
16 somewhere else but you can work with that.

17 So slant bed has ways of 45 degrees or
18 60 degrees, depending upon the machine, and by
19 its own nature, geometrically it's very difficult
20 to get that accuracy at this angle in relation to
21 this when the part is standing horizontally and
22 parallel to the ground. To the floor. You have
23 a slant bed. This has almost no relation to this
24 part except this adjustment needs to be tweaked

1 in every way.

2 And on top of that, you have one more
3 axis which carries the turret, which is this axis
4 as you have seen in that drawing. This axis
5 carries the A axis which we referred, which is
6 the spindle to tailstock and then -- you have the
7 word tailstock. T A I L S T O C K.

8 So as a result of the geometry of the
9 lathe, there is a convention out in the industry
10 that people are convinced that -- and rightly so.
11 I'm sure I'm not the smartest fellow in this
12 world. That the slant bed cannot do very
13 accurate work for long time to the point that a
14 lot of manufacturers of slant bed machine make a
15 maximum 160 inches and they feel that you cannot
16 go any over than that, otherwise they gonna run
17 into problems.

18 Q. Is that something you were aware of before you
19 entered into the purchase order with Machine &
20 Electrical Consultants?

21 A. Correct.

22 Q. You were aware that the convention in the
23 industry was that a slant bed couldn't maintain
24 certain tolerances once you got beyond, say, 120

1 --

2 A. 160. Some Mazak only produce 160 because they
3 feel that they cannot control that. Anything
4 over that, they go to a flat bed.

5 Q. Okay. And explain to me why if you knew that the
6 convention in the industry was that anything over
7 160 inches required you to go to a flat bed that
8 you entered into this purchase order to purchase
9 a slant bed that was going to have a length of 21
10 feet.

11 A. Because Norman promised that they could do it.
12 With a classical case of believing the devil, I
13 guess.

14 Q. Other than a Johnford machine, are you aware of
15 any other manufacturers that manufacture slant
16 bed lathes exceeding 160 inches?

17 A. I can't think of one but I'm sure there are
18 plenty.

19 Q. Okay. When you were --

20 A. Excuse me. Did you say that produce slant bed
21 over 160?

22 Q. Correct.

23 A. I can't tell you that. I can't. I don't know
24 the answer to that. I was thinking -- I thought

1 you had asked that produced lathes of 21 feet.

2 Q. Are you aware of any manufacturers that produce
3 slant bed lathes exceeding 160 inches?

4 A. I don't know of any.

5 Q. Okay. Did you and Mr. Crepeau have any
6 discussions prior to your providing a purchase
7 order to Machine & Electrical Consultants
8 regarding the slant bed versus flat bed lathe for
9 the application that you were looking for in this
10 instance?

11 A. The discussions for this lathe, surrounding this
12 particular acquisition of this lathe, geared with
13 Norman, between Norman and I, with Kevin and
14 everyone else, around the Tomahawk. There was
15 the concern why we bought a long lathe.
16 Otherwise, we could have gotten away with
17 something smaller. In the eventuality this
18 contract came, we would be ready with this lathe.

19 The concern was the accuracy of the
20 lathe on a slant bed. Norman said they could
21 hold it. I said, Show it to me. They said, We
22 sold one in Chile.

23 I don't remember what you told me. Six
24 meters, which is about 18, 19 feet.

1 So shouldn't be any problem. And I
2 believed him. I had that kind of rapport. I
3 didn't think he was dishonest. I believed what
4 Norman say. Okay? And so that's based on that,
5 we believed Machine & Electric and we gave them a
6 purchase order. That's how the whole thing, you
7 know, came about.

8 Q. What is the advantage of a slant bed as opposed
9 to a flat bed lathe?

10 A. It's probably chip removal. That's metal chips.
11 Removal. It's most likely chips removal. I
12 don't know. Maybe Norman can probably help me.
13 But that's --

14 Q. That's from your --

15 A. To me, that is probably most important thing.
16 Personally, I think a flat bed, it's a better
17 lathe but that's my opinion.

18 Q. And is that some element of Monday morning
19 quarterbacking? I mean, now that --

20 A. No. They're all slant back.

21 MR. LITTLE: Wait until he finishes.

22 Q. In other words, you had what you feel is an
23 unsatisfactory experience with the slant bed
24 lathe in this particular case. So when you say

1 in your estimation the flat bed is better, is
2 that an opinion you had prior to your purchase of
3 this Johnford lathe?

4 A. You can do more accurate work so it's out of 30
5 years of cutting metal chips, working with the
6 tool lathes and we are turning shop when it comes
7 to metal chips, meaning rather than milling,
8 we're a turning shop. It's that much of a --
9 they're much better machine for accuracy, a flat
10 bed, that is. But with that said, we probably
11 have two flat beds and 20 slant beds so --

12 Q. The two Mazaks you have with 120 inches of bed,
13 are those flat or slant?

14 A. Slant.

15 Q. The Daewoo that you purchased last month, is that
16 a flat bed or a slant bed?

17 A. Slant bed.

18 Q. Taking a look at Exhibit 7 for the moment, do you
19 know if you ever received a written response from
20 Mr. Crepeau regarding the three items identified
21 on that E-mail?

22 A. I don't think there was a response but some other
23 piece of paper kind of refers to these -- to
24 Norm. Again, some subsequent correspondence. I

1 don't know whether we received a response or not.

2 Q. Okay. Again, taking a look at Exhibit 7, with
3 respect to your concerns regarding the screen,
4 were those concerns taken care of in the Johnford
5 lathe that was delivered to you?

6 A. I can't answer that.

7 Q. With respect to the concerns you had with respect
8 to the chip conveyor, do you know if those were
9 addressed in the Johnford lathe that was
10 delivered?

11 A. I don't know but that's not -- could not be
12 proven since the machine never really operated.
13 That would be the only way to test it. `

14 MR. JACQUES: 8, please.

15 A. But I don't think it was if I remember right.

16 (Memo marked Exhibit No. 8.)

17 (Memo marked Exhibit No. 9.)

18 Q. Mr. Fonte, let me hand you a document that's been
19 marked as Exhibit 8 and ask you if you recognize
20 that document.

21 A. Yes, I do.

22 Q. Okay. And that document indicates that it would
23 have been faxed to you on June 23, 2003; is that
24 correct?

1 A. Yes.

2 Q. There are some handwritten notes on the bottom of
3 the fax with the -- very bottom initials of KM.
4 Do you know if that's Kevin McGinley's
5 handwriting?

6 A. Correct. That is.

7 Q. That document indicates that you and Kevin called
8 Mr. Crepeau and that you mentioned that you were
9 considering cancelling the machine because of the
10 delay in the delivery date.

11 A. Yes.

12 Q. Is that the first time that you indicated to Mr.
13 Crepeau that you were considering cancelling the
14 machine because of the delay in delivery?

15 A. No. It happened before. Actually, this is a
16 result of some previous conversations from the
17 factory.

18 Q. Do you --

19 A. I told him basically if we didn't shape up and
20 get this machine in here fast I was going to
21 cancel, to get his act together, to talk to the
22 factory and get some serious things because we
23 will move on from there depending upon what they
24 say. So this is the end result of those earlier

1 conversations.

2 Q. Okay. Do you recall when you first started
3 discussing with Mr. Crepeau your concerns
4 regarding the delay in delivery of the machine?

5 A. The time?

6 Q. Yes.

7 A. It could have been in April.

8 Q. I'm handing you a document that's marked as
9 Exhibit 9.

10 MR. LITTLE: May I?

11 Q. Have you seen that document before today?

12 A. Yes. I have seen this.

13 Q. Okay. And that appears to be a follow-up to the
14 document that's marked as Exhibit 8. In other
15 words, it was sent within a day of each other,
16 correct?

17 A. I can't see when it's marked here. I can only
18 see a telefax date on the top left-hand corner of
19 Exhibit 8. So I'm not disagreeing with you. I
20 just can't tell you yes, that is the case what
21 you stated. I can barely make out that this
22 Exhibit 9 says June 24th but as far as the
23 relationship date-wise to that, I cannot say
24 that.

1 Q. Is it fair for me to understand that both Exhibit
2 8 and Exhibit 9 were received by you within a
3 couple of days of each other?

4 A. I can't say that.

5 (6/26/03 letter marked Exhibit No.
6 10.)

7 Q. Let me hand you a document that's been marked as
8 Exhibit 10, which is a letter dated June 26 from
9 Machine & Electrical to you from Norman Crepeau.
10 Have you seen that letter before today?

11 A. Yes.

12 Q. And the letter is dated June 26th. Would you
13 have received it shortly after June 26th, if you
14 recall?

15 A. Yes. I imagine this probably came out through
16 the E-mail or --

17 Q. That letter establishes what I understand to be
18 new dates with regard to shipping and
19 commissioning of the machine, correct?

20 A. Yes.

21 Q. And my understanding is that ultimately you
22 decided not to cancel the order based upon your
23 satisfaction with these new shipment dates and
24 commissioning dates; is that correct?

1 MR. LITTLE: Objection. You're
2 characterizing the testimony by the nature of
3 your question.

4 A. That determination of the cancel came after we
5 signed the next document that you're going to
6 show, which is the letter of agreement. It's an
7 agreement that we had after this document. At
8 this point, the decision not to cancel had not
9 been made.

10 MR. JACQUES: Okay. Go ahead and mark
11 that as 11.

12 (7/8/03 letter marked Exhibit No. 11.)

13 Q. Let me hand you a document that's marked as
14 Exhibit 11. Just a second ago you were referring
15 to the decision not to cancel was based upon an
16 agreement that we reached after what's been
17 marked as Exhibit 10. Is this the agreement that
18 you were referring to?

19 A. That is correct.

20 Q. And this is a letter, based on your letterhead,
21 to Norman Crepeau dated July 8, 2003, correct?

22 A. Correct.

23 Q. And that also -- it references phone
24 conversations on July 27 and July -- on June 27

1 and July 1. Do you see that?

2 A. No.

3 Q. Under the reference section.

4 A. Okay. Yeah.

5 Q. The E-mail of June 26, 2003 would have been

6 Exhibit 10, correct?

7 A. Yes. Could have been.

8 Q. Okay. Do you recall receiving an E-mail on June

9 26 other than what's been marked as Exhibit 10?

10 A. I don't recall.

11 Q. The phone conversations on June 27 and July 1,

12 2003, do you have handwritten notes reflecting

13 the conversations that you had on those two

14 dates?

15 A. No.

16 Q. Would those have been phone conversations with

17 Mr. Crepeau?

18 A. Tough to tell right now.

19 Q. I take it you don't have any independent

20 recollection of those phone conversations as you

21 sit here today?

22 A. I cannot recollect but it doesn't mean that they

23 don't exist because I jot everything down so it

24 might be just little something somewhere.

1 Q. Do you have a phone log or something of that sort
2 that you maintain regarding telephone
3 conversations that you have?

4 A. No, no.

5 Q. Okay. With respect to any notes that you have
6 regarding phone conversations with Mr. Crepeau,
7 would that be contained in a file involving this
8 transaction?

9 A. I cannot recall. I put it down, phone
10 conversation. There must have been a reason.
11 Certainly addressing Norman -- I was addressing
12 with this letter to Norman, for Norman to think
13 of a conversation we had in July 27 and July 1st.
14 It is possible that even I might not have it but
15 Kevin might have recorded something for that. I
16 don't know. I cannot answer straight yes or no.
17 I just don't know.

18 Q. What I would ask, Mr. Fonte, is that you would
19 take a look through your records and also any
20 records of your employees to determine whether
21 there are any notes of phone conversations. And
22 if there are, if you would provide them to your
23 attorney.

24 A. Okay.

1 MR. LITTLE: I will tell you I have
2 looked for that information and I was unable to
3 identify any notes that were not produced to you.

4 MR. JACQUES: Fair enough.

5 Q. You would agree if you find them, if you come
6 across them sometime in the future, you'll
7 provide them to your attorney.

8 A. Sure.

9 Q. The July 8 letter was signed by Mr. Crepeau on it
10 appears July 19, 2003.

11 A. Correct.

12 Q. And is it fair for me to assume that as of July
13 19, 2003 you had agreed that providing the
14 specifications in your July 8 letter were met
15 that you were not cancelling the order for this
16 Johnford lathe?

17 A. Correct.

18 Q. The paragraph one of that letter references that
19 the machine must be shipped out of Taiwan no
20 later than August 15, 2003?

21 A. Correct.

22 Q. The proposal from Machine & Electrical to you,
23 which is marked as Exhibit 10, talked about a
24 shipment date of August 31. Do you have any

1 recollection of the conversation that shortened
2 the time period from August 31 to August 15th?

3 A. No. It says not to ship but to arrive in US by
4 --

5 Q. Fair enough. The second paragraph talks about a
6 copy of the factory performed accuracy test
7 report must be received and reviewed by Dynamic
8 before approval to ship will be granted. Do you
9 see that?

10 A. Yes.

11 Q. At any time had you contemplated going to Taiwan
12 to inspect this machine prior to shipment?

13 A. Norman had asked if anyone wanted to go. We were
14 building a forging press also in Taiwan so one of
15 us was considering going to Taiwan to visit both
16 factories for this work that was being done for
17 us there.

18 Q. "One of us" being you or one of your employees?

19 A. Correct.

20 Q. Did you in fact do that?

21 A. No. We did not.

22 Q. And why didn't you?

23 A. Didn't have time.

24 Q. Is it customary in the industry, if you know, for

1 purchases of machines like the Johnford lathe to
2 go to the manufacturer's site to inspect the
3 machine prior to shipment?

4 A. We had never done it.

5 Q. Never had done it in connection with the other
6 machines?

7 A. We bought a Daewoo and we bought Mazak. We did
8 not go and visit. We bought the press. Much
9 more complex piece of equipment than theirs and
10 we did not go to Taiwan.

11 Q. Did you in fact receive an accuracy test report
12 for the Johnford lathe before it was shipped to
13 you?

14 A. I don't know if it was before but we did receive
15 one.

16 Q. Okay. With respect to item three, there's a
17 reference to A, B and C. Those are the same
18 items that were identified in your --

19 A. Nick's.

20 Q. Nick's E-mail to Mr. Crepeau that's been marked
21 as Exhibit 7, correct?

22 A. Correct.

23 Q. And July 8 was providing that Machine &
24 Electrical would be completed commissioning of

1 the machine by September 19, 2003, correct?

2 A. Correct.

3 Q. And then went on to provide for a penalty in the
4 event that the commissioning of the machine was
5 delayed, correct?

6 A. Correct.

7 Q. With respect to the penalty that's identified in
8 paragraph four, is that the only agreement that
9 you and MECI ever reached regarding any penalties
10 for delay in commissioning that you're aware of?

11 A. That's what I can remember, yes.

12 Q. Okay. You don't recall any subsequent documents
13 that would have changed the terms of that
14 penalty?

15 A. No.

16 Q. And with respect to item five, my understanding
17 is what that did was delay the payment of the
18 second installment so that it was due upon
19 commissioning as opposed to within 30 days of
20 delivery of the machine, correct?

21 A. Correct.

22 MR. JACQUES: No. 12.

23 (Accuracy Inspection report marked
24 Exhibit No. 12.)

1 Q. Before we get to 12, let me stay with Exhibit 11
2 just for a second longer. With respect to the
3 performance specifications for this machine, the
4 specifications that you received back in January,
5 2003 and this July 8, 2003 letter, is that the
6 sum total of the written specifications that you
7 had with MECI regarding the performance of the
8 machine?

9 A. Repeat the question again, please.

10 Q. The January, 2003 machine specifications that are
11 marked as Exhibit 3 --

12 A. Correct.

13 Q. -- and this July 8, 2003 letter, are there any
14 other documents which you believe document any
15 additional performance specifications for the
16 Johnford lathe?

17 A. No.

18 Q. I would ask you to take a look at Exhibit 12.

19 A. Is this marked 12?

20 Q. Why don't you take a look at the officially
21 marked 12? The fax Post-it note on the first
22 page for a second. The fax Post-it note
23 indicates that on July 29 Norm from MECI faxed
24 this accuracy inspection report to Kevin at

1 Dynamic. Do you recall reviewing the accuracy
2 inspection report sometime around July 29?

3 A. No. I wasn't even into the company at the time.
4 I was overseas. But we closed on Saturday,
5 August 12. 2nd.

6 Q. Do you know if you had an opportunity to look at
7 the accuracy inspection report prior to your
8 closing on August 2nd?

9 A. No, I did not.

10 Q. You did not or you don't recall?

11 A. I wasn't here so I couldn't know that.

12 Q. Do you know if Kevin had an opportunity to review
13 the inspection report prior to --

14 A. I cannot answer that.

15 Q. The bottom of page -- the first page indicates
16 that the model is an HT275 -- is it G? 275G,
17 correct?

18 A. It appears to be that way. It's not clear.

19 Q. And this has a serial number TKA3005. Do you see
20 that?

21 A. Yes.

22 Q. Have you ever matched that serial number with the
23 machine that is on your floor?

24 A. I have not.

1 Q. Do you have any reason to believe that this
2 inspection report relates to a machine other than
3 the Johnford lathe that was delivered to you?

4 A. Yes.

5 Q. Okay. Tell me what is the basis for your belief
6 that this inspection report relates to a machine
7 other than the Johnford lathe.

8 A. Well, one thing is what is depicted in here.
9 It's for a parallel lathe. For a flat bed lathe.
10 And we got a slant bed. So --

11 Q. Can you point to me what you're pointing to when
12 you said that?

13 A. If we look at the straightness of bed side ways,
14 item one, this is not representative of the lathe
15 that we have on the floor. Right off the bat.
16 So this is almost an invalid report. Then you're
17 trying to understand what's being said and
18 disregard the pictures being shown and you try to
19 make some sense.

20 Q. Okay. Let me just interrupt you. Just to make
21 it clear for the record. What you're pointing to
22 is the three illustrations that are part of block
23 number one on the first page, correct?

24 A. Correct.

1 MR. LITTLE: He didn't say the
2 pictures. He referred to item one.

3 Q. Okay. It's your position that all of item one
4 relates to a flat bed lathe as opposed to a slant
5 bed lathe?

6 A. The illustrations, the three pictures that we see
7 in the illustrations on item one, it's showing a
8 parallel -- a flat bed lathe and not a slant bed.

9 Q. Any other reasons why you believe that this
10 inspection report relates to a machine other than
11 the Johnford lathe that was delivered to you?

12 A. It's -- there is a lot of things in here. Trying
13 to get into the technicalities, this report says
14 certain things and the accuracy we found it
15 otherwise when the machine first came. The
16 headstock that they showed to be very perfect in
17 the alignment --

18 You have to understand what is being
19 written rather than looking at the picture and
20 trying to make some sense here. If it is the
21 same report, it is the poorest thing I've ever
22 seen around machine tools.

23 Q. You talked about the headstock and you -- and I
24 know you were pointing to something but I

1 couldn't pick it up. What box or test item are
2 you pointing to when you talk about --

3 A. Stupid thing. Um --

4 Item eight. Parallelism,
5 P A R A L L E L I S M, of longitudinal movement
6 of carriage with tailstock spindle center line.

7 Q. And what about that particular test item number
8 would lead you to believe that it relates to a
9 machine other than the Johnford lathe that was
10 delivered to you?

11 A. The accuracy reported here -- it's either false
12 or belongs to another machine because what we
13 found on the machine was so completely out of
14 whack that it couldn't have been this report,
15 period. It's not even close to create a doubt
16 what they talking about or what we found. And
17 that goes for the parallelism between --

18 (Coffee was spilled.)

19 (Off the record.)

20 A. The accuracy of various other points on the
21 machine that we can find here. Some discrepancy
22 basically between what is being reported to what
23 we actually physically found on the machine.

24 Q. And we'll get to what you ultimately found on

1 this machine a little bit later on. When was the
2 machine shipped out of Taiwan, if you know?

3 A. I don't know.

4 Q. With respect to this inspection report, do you
5 know whether you reviewed it prior to the machine
6 being shipped out of Taiwan?

7 A. Again, I did not review it. I'm sure someone did
8 here other than John. And it may have for sure
9 been after we came back from vacation.

10 Q. Which would have been sometime after August 11?

11 A. Probably.

12 Q. The issue about test item one, which you
13 indicated depicted a flat bed lathe as opposed to
14 a slant bed lathe, at any point did you or anyone
15 else from your company question Norman Crepeau
16 regarding test item one prior to the machine
17 being shipped out of Taiwan?

18 A. No. The intent of this thing, Keith, if I'm
19 allowed to, was that in the rush of trying to get
20 this machine out with the cancellation pending,
21 we did not want to get something half finished
22 over there that would have to be finished here so
23 that was the intent of looking that the machine
24 is actually done. To be honest, nobody really

1 actually looked and analyzed. Okay? Or compared
2 that 0.04 millimeters wouldn't ultimately meet
3 the specification that were part of the proposal.

4 Nobody really cared. Those could not
5 be met here anyway and that's what we really
6 cared. This is the case. When you sell me a car
7 with a guarantee that that 60 miles an hour and
8 you asking me to check inside the sales room, it
9 just cannot be done. You got to take it on the
10 street, on the highway, make sure the cops aren't
11 there and then you go 60 miles an hour.

12 So what they say, if the guy says I
13 have 500 horsepower, I have a big flat tires and
14 I have this and you can go so fast, it didn't
15 really matter. Because ultimately estimate 60
16 miles an hour on the highway and that's basically
17 in a nutshell what it is.

18 Q. But my understanding is one of the things you
19 said with respect to test item number one, the
20 three illustrations depicted a flat bed lathe as
21 opposed to a slant bed lathe, correct?

22 A. Correct.

23 Q. That didn't relate to performance but that
24 related to what kind of machine you were buying,

1 correct?

2 MR. LITTLE: No. Those questions arose
3 in the context of whether the report was an
4 accurate report.

5 MR. JACQUES: I understand.

6 A. Right. And you cannot really answer. You asked
7 if I have any reason to believe that what's been
8 shown here was the lathe or not. I cannot tell
9 you that but if I have to take what's being shown
10 here, this belongs to a flat bed lathe, not a
11 slant bed lathe.

12 Q. That's based upon the illustrations in item one?

13 A. Not just one. All of it. It's the same thing.

14 Q. Okay.

15 A. The left-hand side column, it's written and when
16 it says straightness of bed side ways means
17 something. To the guy. The technician like me.
18 It means what it says and I can understand that.
19 Now I can say disregard what's here and apply it
20 to a slant bed lathe. But then it comes the
21 question. There is ways -- there are two sets of
22 guideways on a slant bed machine and there is
23 only one set of ways on a flat bed.

24 So the moment you show me -- the

1 illustration of flat bed and you say straightness
2 of bed side ways, it just doesn't make any sense.

3 Q. At any point before Dynamic received the Johnford
4 lathe, did you raise that concern with Norman or
5 anyone else at MECI?

6 A. No. Because we had to meet 60 miles an hour plus
7 or minus five-tenths and plus or minus
8 two-tenths. The position of accuracy was plus or
9 minus five-tenths and the repeatability was plus
10 or minus two-tenths.

11 All of this, all of this, would
12 ultimately have to meet that accuracy. That is
13 the sum of all of this. If there were '30 pages
14 of this, it wouldn't make any difference, any
15 more or less than two pages. Ultimately that is
16 the test.

17 Q. Did you at any time attempt to determine whether
18 this accuracy inspection report demonstrated the
19 machine's compliance with the specification that
20 you had agreed upon with MECI?

21 A. It cannot. It's impossible because the machine
22 must be set up where it's going to be. It's
23 going to be leveled on the foundation it's going
24 to be and that's when you check that accuracy.

1 You cannot check 60 miles an hour inside the
2 sales room.

3 Q. So this inspection report doesn't really tell you
4 much other than the fact --

5 A. Exactly. It will tell me the accuracy of the
6 spindle. It will tell me certain things but
7 that's all it's going to tell me. The bearings
8 and the spindle and whatever else. Other little
9 things.

10 Q. Did you ever request that Johnford provide you
11 with additional documentation regarding the
12 performance of the machine, other than this
13 inspection report?

14 A. No. The commissioning that has to take place at
15 Dynamic has to check those accuracy, the
16 specifications that were agreed upon and it can
17 only be checked here. If they actually
18 guaranteed that they had done it in Taiwan? If
19 they wanted to say their story. Ultimately that
20 document, Exhibit 11, states that whatever they
21 say must be met and duplicated here for the lathe
22 to be accepted.

23 On item --

24 Q. Item two. Correct?

1 A. Right. So that was never addressed and needs to
2 be addressed.

3 Q. Okay. My understanding reviewing the records is
4 that the machine wasn't delivered to Dynamic
5 until sometime in October of 2003, correct?

6 A. Right.

7 Q. The agreement that you had with MECI dated July
8 8, 2003 indicated that the machine must be
9 shipped no later than August 15, 2003, correct?

10 A. Right.

11 Q. And that it would need to be commissioned on or
12 before September 19, 2003, correct?

13 A. Correct.

14 Q. At any time prior to the machine arriving at
15 Dynamic Machine Works, did you indicate to MECI
16 that since the machine had not been shipped and
17 received and commissioned in accordance with the
18 July 8, 2003 letter you were not going to accept
19 delivery of the machine at Dynamic?

20 A. No. There was no reason for that, Keith. The
21 delays were caused by a number of things. Norman
22 had told me the fellow had brought the machine to
23 a warehouse. There was some issues with the
24 shipper. The shipper or the people that had to

1 rig this thing up to Boston, he had picked a
2 company that we had just used to deliver one of
3 the large flowforming machines and they done such
4 a poor job that I warned Norman. I said, You
5 better watch these people because I don't think
6 in my opinion they're capable.

7 Another three or four days went by. So
8 it was kind of a creeping a few days here and few
9 days here that brought us in October. No one
10 knew what he was going through with this machine.
11 No one had a gun on his head. We're not going to
12 cancel the machine for a week being late. Beside
13 the fact there was a penalty clause into this
14 agreement of July 8th.

15 Just to finish that, in my closing
16 statements on the July 8th agreement with Norman,
17 on this closing paragraph, "I trust the above
18 agreed conditions will be taken seriously by M&E
19 and the Johnford people since further failure to
20 deliver will be met with a cancellation of the
21 order."

22 So it was not an issue. We will cancel
23 because we just had enough of this thing. And so
24 that if and when the machine did arrive in the

1 United States, you could almost feel, you had
2 this machine. You needed it. We needed this
3 machine. We had guns on the head with the
4 customer that probably accounts for half a
5 million dollars a year for us. We were ready to
6 cancel because we could not do the parts. M&E
7 knew it.

8 Q. Prior to the date of delivery which was October
9 9, 2003, Dynamic didn't cancel the order,
10 correct?

11 A. Correct.

12 Q. You mentioned you had a customer that was anxious
13 to get their work done. Was that work that could
14 not be completed with the Mazak that you had on
15 the floor?

16 A. We needed additional capacity. Mazak was busy.
17 Couldn't get into Mazak so we had relied on this
18 machine from July to get in and then originally
19 -- these are large tubes that we do. And we
20 needed additional capacity and there had been
21 delays. I think we had received probably the
22 preform, what we call the starting blanks,
23 provided by the customer in June.

24 And we had told the customer that at

1 the time the machine was going to come in July
2 when the first delay arrived. The second delay
3 we were told it would come in July, August. We
4 told the customer in September they will get the
5 parts. Here we come. September has come and
6 gone and the parts wouldn't even started, making
7 them, turning them into what is a starting blank.
8 We had another three or four weeks ahead of us.
9 By the time the machine could not meet
10 specification for acceptance, the customer had
11 had it with us.

12 Because it wasn't a case where we told
13 them, You'll get it at this date. It was
14 continuous days in our part to provide them with
15 finished units.

16 Q. Ultimately did you lose that contract with that
17 customer?

18 A. No, we did not.

19 Q. Do you continue to do work for that customer?

20 A. Yes.

21 Q. Did you have to pay any performance penalties or
22 reduce the contract price --

23 A. No.

24 Q. -- because of the delay?

1 A. No. We paid top dollar for the machine to
2 replace the Johnford within three days. Called
3 Mazak. We asked the price. Bring the machine
4 in. That was the end of the issue.

5 Q. The Mazak you obtained, what's the model number?

6 A. Slant 60. I think it's CNC Slant 60. Something
7 like that.

8 (12/9/03 letter marked Exhibit No. 13.)

9 Q. Mr. Fonte, I'm handing you a document that's been
10 marked as Exhibit 13, which is a letter dated
11 December 9, 2003 from Dynamic to Norman Crepeau.
12 Do you recognize that letter?

13 A. Yes.

14 Q. And is that a letter that you wrote?

15 A. Yes.

16 Q. And it's signed by you on page two, correct?

17 A. Correct.

18 Q. On page three of that letter -- it's not really
19 page three but the third page attached to that
20 exhibit is a fax cover sheet from you to Norman
21 Crepeau purporting to attach what I assume is the
22 December 9 letter, correct?

23 A. Right.

24 Q. My understanding is that as of December 9 you

1 were prepared to give Machine & Electrical
2 Consultants until Friday, December 19, 2003 for
3 them to, using your words, fully and
4 unconditionally commission the machine. Is that
5 correct?

6 A. Correct.

7 Q. At the time that you wrote this letter, as of
8 December 9, 2003, what were your complaints
9 regarding the machine? What was wrong with it?

10 A. Machine could not meet specifications. Machine
11 had arrived in beginning of October. I believe
12 October 8. Whatever the date was. This is
13 December 9. The machine had been here for a
14 month. And we still couldn't get going.

15 Q. Who during the period of October to December,
16 2003, who if you know had worked on commissioning
17 the machine?

18 A. Various people from Machine & Electrical. There
19 have been a couple people probably from here
20 supervising and just making sure they were doing
21 the right thing. There had been riggers who
22 brought the machine in. There had been Oxford
23 Engineering trying to get the machine -- to check
24 the accuracy. And DRW, another company that

1 Norman had requested to come and check accuracy
2 and repeatability of the machine.

3 Q. You mentioned a couple of people from here.

4 Would that have been the people you identified
5 earlier as employees of Dynamic?

6 A. Physically I think the work was done along with
7 Norman's people by Nick, maybe Vannah, John but
8 they were in and out. It was not their job to
9 set the machine. Norman's people would set up
10 the leveling, the rough leveling. They'll check
11 and then they'll go away and they'll keep on
12 going.

13 They had more of a supervisory
14 responsibility at that stage rather than getting
15 involved with that except just before prior to
16 that. One of Norman's people was taking cuts,
17 which is what he and I discussed what I wanted to
18 do. And I found that the person that Norman had
19 was not competent enough to be entrusted with
20 that. He was using the steady rest.

21 The steady rest as the task to support
22 the part, a long piece, when it droops. And it
23 falls by gravity. Okay? And that's all it's
24 supposed to do. He described to me what he

1 found. He was 8/1000ths off this way. He
2 described the condition that he used to cut this
3 piece to create a certain situation in the
4 accuracy of the piece that I said, That's not
5 possible. You cannot do that. It's impossible
6 for the lathe to do that. And he said, Well, it
7 does. So I said, The only way you can do that is
8 to have the steady rest working in reverse.
9 Instead of supporting, it's actually pulling the
10 support down. He said, No way.

11 So we did. I let him release the
12 steady rest and the part sprung up.

13 Q. Who was that individual?

14 A. I don't know.

15 Who was the last guy here? That I told
16 him to go home. Whoever that guy --

17 Q. If you don't know his name, that's fine.

18 A. Right. But it was at that point, the day before,
19 that I put Dale LeClair, I said, Look, the guy is
20 not a machinist. He might be a good technician
21 but he is not a machinist. This is what we're
22 going to do so don't waste any more time here.

23 And the directives were to measure a
24 feet, pull a part out, take a cut. A series of

1 things was basically set up so we would have a
2 very defined task how we could measure the
3 machine.

4 At that point the machine had failed.
5 Norman said one axis was out. One was in. The
6 other fellow, DRW -- we consider both axis out
7 there but then when Oxford came it was obvious
8 the machine was nowhere near where it was
9 supposed to be. And at that point, Norman and I
10 spoke. And I told Norman, I said, Look, the
11 situation is probably going to get a lot worse
12 once we start to cut. But assuming that the
13 machine is made, let's take some cut. 'Let's
14 forget what the laser is telling us. Let's close
15 our eyes to it.

16 This is conversation I had with him.
17 Let's cut. Let's see what we can get out of it.

18 And at that point he put this man there
19 and the man was not a competent machinist.
20 Certainly this condition was far beyond the man's
21 capability to understand what was going on. If
22 he was to go and play around with the lathe, he
23 probably could do it. But this was -- we were
24 pushing -- trying to understand what was going

1 on.

2 And what I found there was not
3 heartwarming. He was the wrong man there. So I
4 gave him one of my supervisors on the large
5 machine, Dale. I said, You speak with the guy
6 and that's all we going to do.

7 One of the things was to set up the
8 tailstock for him to align it any way he wants
9 it. Not Dale but Norman's fellow. To take a cut
10 and then adjust the tailstock where he wanted it
11 in relation to the center. And then from that
12 point on, I did not want him to touch the
13 tailstock. I want him to move it every foot and
14 take another cut and see what the accuracy were.
15 I left here. Was 11 o'clock at night. Came back
16 the next morning at seven. They had finished the
17 cut and the lathe was 9/1000ths out of whack.
18 Okay?

19 And so --

20 Q. I didn't mean to interrupt you. When did that
21 happen? What was the date?

22 A. After I sent this letter. The same night
23 actually. This letter went probably five o'clock
24 in the afternoon and at night we were going

1 through this thing. Okay?

2 So I put Dale with the fellow. I came
3 back the next morning and they say that thing was
4 eight and a half thousandths off. Eight and a
5 half thousandths -- eight and one half
6 thousandths off what it should be. The
7 alignment. And then John came out, Heymans, and
8 he said, Ven, I know you're upset. Look. He
9 says, That machine, the tailstock doesn't go six
10 feet to the spindle. The five-inch bar cannot
11 cut the center. He says, I don't know what you
12 want to do.

13 And that's when I said, Okay. Enough
14 here. Because if we start to play with this
15 issues, we'll be another month and I didn't have
16 a month.

17 Q. As of --

18 A. Parts there with customers screaming. We
19 couldn't -- never mind get out of the tunnel, we
20 couldn't see the light at the end of the tunnel.

21 Q. As of December 9, you were prepared to give MECI
22 until December 19 to commission the machine,
23 correct?

24 A. Yes.

1 Q. As of December 9, had MECI told you that it had
2 completed the commissioning process?

3 A. It couldn't have been completed. I didn't need
4 MECI to tell us how -- machine was specked out by
5 M -- Machine & Electrical that it was supposed to
6 meet the plus or minus five-tenths accuracy and a
7 plus or minus two-tenths repeatability. We've
8 been there for a month. I didn't need them to
9 tell me that they weren't completed.

10 Q. Yeah.

11 A. It's my call when we call the shots here.

12 Q. My question --

13 A. Because I'm the buyer of that machine. `

14 Q. At no time up until December 9 did MECI tell you,
15 We're done. The machine works. We're leaving.

16 A. No.

17 Q. Between October 9 and December 9, is it a
18 situation like you sometimes have with
19 contractors where they work a couple days and
20 then they're gone for two weeks and then they
21 come back for a couple days, or did they work
22 fairly regularly in getting this machine to work
23 between October 9 and December 9?

24 A. The commission of a lathe is subjective who is

1 looking at that question. The commission of a
2 lathe is usually no more than a week. On a
3 machine of that size.

4 Q. And --

5 A. And --

6 Q. -- what do you base that on?

7 A. Thirty-five years with machine tools.

8 Q. Okay. I didn't mean to interrupt. Go ahead.

9 A. I answered the question.

10 Q. So when the machine arrived on October 9, you
11 anticipated that commissioning would be complete
12 within a week or so?

13 A. Correct.

14 Q. Is that something that MECI represented to you?
15 Was that a conclusion that you made based upon,
16 as you testified, your years of experience?

17 A. Let me bring you back to MECI letter to me.

18 MR. LITTLE: Exhibit 10?

19 A. They're giving themselves 11 days with two
20 weekends in between. Delivered by September 8th.
21 Full commissioning by September 19. That's
22 Norman's writing. Eleven days with two weekends
23 in between so that's one week. I'm giving you a
24 week and a half. Okay?

1 Q. Was this December 9 letter the first time that
2 you gave MECI a deadline to complete the
3 commissioning work?

4 A. There might have been other conversations I'm
5 sure verbally.

6 Q. Are you aware of any writings where you gave a
7 deadline to complete the commissioning work
8 between the time that the machine was delivered
9 and the --

10 A. I don't think so.

11 MR. LITTLE: You understand the July
12 8th letter did exactly that as well?

13 A. After the machine arrived. That's what you
14 asked, right?

15 Q. Correct.

16 A. No. This is a summary of what happened and it
17 specifies the whole thing but basically since we
18 had -- since we had received the machine, this
19 was the first document in writing that said,
20 Look, the situation is bad. Just get it together
21 or you're out of here.

22 Q. Do you have specific recollections of having oral
23 discussions with MECI in which you gave them a
24 commission deadline between the date of delivery

1 of the machine and this December 9 letter?

2 A. Not a deadline.

3 MR. JACQUES: Fourteen, please.

4 A. Can I -- excuse me for one second -- call Matthew
5 and tell him something? I'm supposed to be at
6 lunch with someone at one o'clock.

7 Q. Sure.

8 (Recess.)

9 (12/11/03 letter marked Exhibit No.
10 14.)

11 (Lunch recess.)

12 MR. JACQUES: For the record, we had
13 broken for lunch and we were going to resume Mr.
14 Fonte's deposition for two o'clock this
15 afternoon. Mr. Fonte has been held up with a
16 lunch engagement and we have agreed to suspend
17 his deposition and move on to one of the other
18 scheduled depositions for this afternoon and then
19 upon conclusion of John Heymans' deposition, we
20 will then resume Ven Fonte's deposition.

21 MR. LITTLE: Right.

22 (Off the record.)

23 MR. LITTLE: By agreement of the
24 parties, we will reserve the right to read and

1 sign the deposition. Thirty days to read and
2 sign. Okay?

3 MR. JACQUES: That would be fine. My
4 only concern is the --

5 MR. LITTLE: We'll have ours read and
6 signed by the -- within a week that we receive
7 it.

8 MR. JACQUES: That would be fine. And
9 if for whatever reason it is delayed for business
10 reasons or stuff, we can just discuss the summary
11 judgment opposition date and reach some kind of
12 accommodation.

13 MR. LITTLE: That's fine. `

14 (Whereupon, the deposition was
15 suspended at 2:00 p.m.)
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1 AFTERNOON SESSION

2 Q. Mr. Fonte, we're back from lunch break and just
3 remind you that even though your deposition was
4 suspended for a period of time, you're still
5 under oath.

6 A. Yes.

7 Q. I would like to hand you a document that we
8 marked as Deposition Exhibit 14.

9 MR. JACQUES: I think I gave it to you
10 before we --

11 MR. LITTLE: You did. Thank you.

12 Q. Have you seen that letter prior to today?

13 A. Yes.

14 Q. That letter is dated December 11, correct?

15 A. Correct.

16 Q. And it's a letter from your attorney to Mr.
17 Crepeau?

18 A. Correct.

19 Q. And what is your understanding regarding why that
20 letter was sent to Mr. Crepeau?

21 A. I think officially and formally notify Machine &
22 Electrical that we were not going to accept the
23 machine.

24 Q. Okay. And that letter is dated the 11th of

1 December?

2 A. Correct.

3 Q. Which is two days after your letter had been sent
4 to Mr. Crepeau giving him until December 19 to
5 fully and finally commission the machine,
6 correct?

7 A. Correct.

8 Q. What happened or why did you decide to rescind
9 your December 19 deadline that had been
10 communicated two days before?

11 A. I thought I covered that before I went to lunch.
12 It was obvious after I sent the letter out that
13 we were not going to get this machine on line and
14 working soon. The machine was out of spec.
15 Eight, eight and a half thousandths. The machine
16 had not been able to meet both laser companies
17 that Norman had sent in. Did not meet the
18 specification of the proposal.

19 And as much as I wanted, with the
20 machine on the floor, as much as I wanted to go
21 forward with that, the fact that the machine
22 which I had not heard up to that point could not
23 cut with a five-inch bar to center, could not
24 meet the specification. It was the proverbial

1 drop that tipped the bucket. I said, That's it.

2 I did not have another month to play with this
3 thing. We needed a machine and that was the end
4 of it.

5 Q. The first item listed in the December 11 letter
6 is that the equipment was incapable of holding
7 positional accuracy as specified. Specifically
8 what was the positional accuracy that you
9 understood the machine was unable to meet?

10 A. Plus or minus five-tenths of a thousand. And the
11 repeatability, which is supposed to be a plus or
12 minus two-tenths of a thousand.

13 Q. With respect to your determination that the
14 machine was incapable of holding the positional
15 and repeatability accuracy, what did you base
16 your conclusion upon?

17 A. Repeat the question, please.

18 Q. What did you base your conclusion upon that the
19 machine could not hold the positional accuracy
20 and repeatability accuracy within specs?

21 A. The two engineering firms that Norman hired to
22 come and inspect the machine both produced
23 records, written records of the machining
24 capability to meet plus or minus what we needed.

1 Q. And the two firms were Oxford Engineering and
2 DRW?

3 A. Correct.

4 Q. With respect to DRW, did you speak to any
5 individuals at DRW regarding the results of their
6 testing?

7 A. No, but the result, what I spoke, I came in on a
8 Sunday trying to expedite it, as Norman knows.
9 He arranged when he said he couldn't get this
10 person for two weeks -- I went ballistics. Okay.
11 So he arranged for the fellow to come in with one
12 of his people on a Sunday. And I came in, opened
13 the door, let him in and I worked while they were
14 playing with that.

15 And at the end of the day in the
16 afternoon, fellow was complete. He had completed
17 the job, and he basically told me that one axis
18 seemed to be within specs and one axis was out.
19 There was as far as the positional accuracy
20 showing about one-thousandth when it should be
21 five-tenths or half thousandths.

22 There is another issue there which is a
23 repeatability of the machine which is supposed to
24 be within plus or minus two-tenths of a thousand

1 and the machine is out. At that point, I wasn't
2 that much concerned. That was the first time we
3 went around this thing. I wasn't that much
4 concerned with that kind of reading. I was more
5 concerned our ability to maintain a plus or minus
6 half thousand throughout the stroke of this
7 machine. That was the primary concern that I
8 had.

9 If something does not on a machine tool
10 -- if you give a command to the machine and the
11 machine misses that command by one-thousandth,
12 you can always change the program to make the
13 machine go where you want it to so yes, it is not
14 right but you can deal with. It's when the
15 machine is wavy. Nothing you can do about it.

16 Q. What test results did you rely upon in concluding
17 that the machine was wavy when it performed?

18 A. The Oxford Engineering. The other person did not
19 check that.

20 Q. Okay. And Oxford Engineering is Jack Grosberg?

21 A. That's his last name? Yeah.

22 Q. And I understand that you reviewed the test
23 results by Oxford Engineering?

24 A. Yes.

1 Q. Did you and Mr. Grosberg speak at any point
2 regarding the testing results that he had
3 observed?

4 A. Sure.

5 Q. How many occasions did you and Mr. Grosberg speak
6 regarding what he had found regarding the
7 capability of this machine?

8 A. We probably spoke through the course of a week,
9 ten days, whatever he was here. Three times,
10 four times. I went outside. How things are
11 going, to check how things are going. Sometime
12 at the later part of his working here, we had a
13 conversation and basically said, This is the best
14 this machine is going to do. He said -- this
15 person was for a long time -- I don't know what
16 he was. Large company. In charge of
17 maintenance.

18 He says, I usually do things in one
19 day. He says, Maybe 12, 14 hours. I have to
20 come back the next morning and so on. He said,
21 I've been here for a week. He said, This lathe
22 is not going to go within the plus or minus
23 five-tenths. It's not going to meet
24 specifications.

1 Q. Other than you and Mr. Grosberg, who else was
2 present when he told you that, if anybody?

3 A. I don't recall.

4 Q. Is Mr. Grosberg the only individual that has told
5 you that the machine could not meet the
6 specifications?

7 A. Yes.

8 Q. Has anyone ever told you that the machine could
9 meet specifications with additional work?

10 A. We have asked you guys three times in writing to
11 answer that question. It's funny that you ask
12 that. We asked three times with a letter. Can
13 your machine meet the plus or minus five-tenths?
14 You never gave us the courtesy to answer and now
15 you come back and ask me if anyone has told you.
16 We asked the same question three times.

17 No. I did not hear that from anyone.

18 Q. Okay. Has anyone other than Mr. Grosberg and DRW
19 performed testing on the machine?

20 A. No.

21 Q. With respect to your oral conversations with Mr.
22 Grosberg, did you keep any notes regarding those
23 conversations?

24 A. No.

1 MR. JACQUES: Mark that whatever is
2 next.

3 (Document marked Exhibit No. 15.)

4 Q. Mr. Fonte, I'm handing you a document that we
5 have marked as Exhibit 15. And I understand that
6 at least the first three pages of that exhibit is
7 a document that you have prepared --

8 A. "You" being Dynamic.

9 Q. "You" being Dynamic. That Dynamic has prepared
10 which in effect extrapolates or graphs the
11 results that Mr. Grosberg reported on his
12 November 25, 2003 report, correct?

13 A. That is correct.

14 Q. With respect to the portion that Dynamic
15 prepared, who prepared that documentation?

16 A. John Heymans.

17 MR. LITTLE: I would like to interrupt
18 for the moment. The version you gave as Exhibit
19 15 varies from the version that I gave you. It
20 has handwriting on it.

21 A. Looks like my handwriting when we were in Maine.
22 Tool turret. I don't know what it says there.
23 Tool carriage. It's written here. Tool turret.
24 And then there is showing the tool or probably

1 something. I don't know if you want to rip it
2 and make a new clean one or leave it.

3 Q. We can leave that and let me ask you some
4 questions just to clarify it.

5 A. Sure.

6 Q. The light printing that appears to be in pencil
7 is your markings on that document?

8 A. It seems to be, yes.

9 Q. Okay. The rest of the document being the first
10 three pages were prepared by John Heymans. And
11 if I recall correctly, you made the handwritten
12 changes at the deposition of Norman Crepeau,
13 correct?

14 A. Possibly.

15 MR. LITTLE: Actually, I believe it was
16 not during the deposition.

17 MR. JACQUES: After.

18 MR. LITTLE: Discussions following
19 that.

20 A. Might have been a copy that I had in my briefcase
21 or something.

22 Q. Okay. With respect to the last two pages of
23 Exhibit 15, which is the Oxford Engineering
24 November 25, 2003 results, who did you receive

1 that documentation from?

2 A. Probably from my engineering department. This
3 was from Oxford to John and Nick. People that
4 were involved with him. And ultimately I got to
5 see it through them. He did not give it to me
6 directly.

7 Q. Okay. And with respect to the handwritten
8 portions on the last two documents, the last two
9 pages on the document, specifically on the first
10 page where it says "tailstock ways" and then
11 "final tailstock ways at 45 degrees," do you know
12 whose handwriting that is?

13 A. No. I wonder if it was John -- Jack's assistant.
14 He had an engineer that operated the computer and
15 Jack did the measurement at that time.

16 Q. Do you happen to know the name of the assistant
17 that was operating the computer?

18 A. No, sir.

19 Q. And likewise, I'm assuming that since it appears
20 to be the same handwriting, the handwriting on
21 what's identified as B with a circle on the last
22 page of the exhibit, you don't know whose
23 handwriting that is?

24 A. Correct.

1 Q. And with respect to your conclusions that the
2 Johnford lathe was not capable of meeting the
3 repeatability and precision accuracy
4 specifications, is it fair for me to assume that
5 that is based upon Mr. Grosberg's November 25,
6 2003 test results and his conversations with you?

7 A. And DRW both.

8 Q. Okay.

9 A. But this was the more serious.

10 Q. Okay. Is there anything else other than the
11 Exhibit 15 and the DRW stuff that you found of
12 less significance that you relied upon in
13 concluding that the lathe was not capable of
14 meeting the repeatability and precision accuracy
15 specifications?

16 A. For one thing, the five-inch bar on the machine.

17 Q. Okay.

18 A. And basically the accuracy. That's the primary
19 concerns.

20 Q. When you say "the five-inch bar," my
21 understanding based upon 14 is that the machine
22 was unable to --

23 A. Based on what?

24 Q. Exhibit 14.

1 A. Oh, 14.

2 Q. I'm sorry. Is that the machine was unable to
3 reach the center line of the X axis when using a
4 five-inch boring bar.

5 A. Correct.

6 Q. And how did you reach that conclusion?

7 A. They told us.

8 Q. "They" being MECI?

9 A. Right. And actually, they say they could correct
10 one of -- one of his men told me. Mark. I don't
11 know what his name was. It was a counterbalance
12 cylinder for the turret that impaired, physically
13 impaired the turret that traveled the center but
14 they could change that and maybe they could get
15 four inches but definitely they were not going to
16 get five inches so the case was final.

17 Q. And do you recall when you --

18 A. And I learned that that morning, by the way, when
19 I came in the next morning, December 9, December
20 10. After I wrote that letter. I did not know
21 about that issue in the morning. Until that
22 morning. It was John that told me. I went to
23 the machine. And the guy confirmed it, yes.

24 Q. John Heymans told you?

1 A. Right. That the issue with the tailstock would
2 not go against the -- within six feet or so of
3 the spindle and this issue of the five-inch
4 diameter bar going to center or not what it
5 supposed to be.

6 Q. With respect to item three where the headstock
7 chuck and the tailstock body couldn't come within
8 six feet of each other, was that because of the
9 installation of guards, if you know, on the
10 machine?

11 A. Yes. And that is why we dropped -- personally,
12 anyone that does that, and that manufacturing
13 machine like that, doesn't belong in that
14 business but I'm willing to tolerate it and say
15 it's fine. We'll take the guards off. All
16 right?

17 We have the same situation on other
18 machines and that has nothing to do with --
19 that's irrelevant to the length of the machine.
20 That's just a tailstock getting to the spindle.
21 And everyone has got a solution to it. Obviously
22 in Johnford they haven't figured out how to do it
23 yet.

24 Q. The fact that it could not come within six feet

1 of each other was because the guards prevented
2 that from happening?

3 A. I learned that, yes.

4 Q. Okay. Would you agree that removing the guards
5 was a relatively simple solution to the
6 difficulty of --

7 A. Yeah. We dropped it. Something I didn't like.
8 And I could name, by the way, another two dozen
9 things that I think are just junk around that
10 machine. Okay? We dropped that. That's not an
11 issue anymore. We said, Fine. We don't like it
12 but we will take it.

13 But the five-inch bar and the accuracy
14 of the machine are pretty serious thing. The
15 machine was purposely bought with something in
16 mind and we do go to center with the machine. If
17 the machine cannot perform that, then we don't
18 need that machine in here.

19 Q. My understanding is your position in this case is
20 that the specifications substantially impairs the
21 value of the Johnford lathe to you?

22 A. Not substantially. It negates any value if I
23 can't work with it.

24 Q. You mentioned that there were a dozen or so other

1 concerns you had with the machine. Is it fair
2 for me to assume that what substantially impairs
3 the value of the machine to you in your mind is
4 item one and item two on Exhibit 14?

5 A. Correct.

6 Q. And the other items are perhaps a nuisance but
7 they're insignificant?

8 A. Dropped it long time ago.

9 Q. Can you identify for me what expenses you believe
10 Dynamic has incurred in connection with your
11 purchase of the Johnford lathe?

12 THE WITNESS: Do you have that list?

13 A. We made a list.

14 Well, if I have to answer that question
15 right off the memory, there's been a number of
16 things associated with that. Of course the fact
17 we had to tear down a door and the installation
18 of the machine, the removing of the machine, the
19 storing of the machine. All of those are
20 expenses that we have to deal with.

21 Q. My understanding is that since the delivery of
22 the Johnford lathe, in addition to the Mazak and
23 the Daewoo machine that you have purchased, you
24 also purchased a planing machine, I believe? Is

1 that right?

2 MR. CREPEAU: A press.

3 Q. A press? Forging press?

4 A. Yes.

5 Q. Would the delivery of the forging press have
6 required alterations of your building in order to
7 get it into your building?

8 A. No, sir.

9 Q. You confident of that?

10 A. Perfectly confident.

11 Q. One of the items you have identified in your
12 affidavit --

13 A. Machine came in three pieces and then put
14 together. Don't look at it as it stands there.
15 So it was put on the side. It came in. There
16 was no problem.

17 Q. Okay. One of the items -- actually, to be fair,
18 let's go ahead and mark this as Exhibit 16.

19 (Affidavit of Venanzioro Fonte marked
20 Exhibit No. 16.)

21 MR. LITTLE: This is your affidavit.

22 (Off the record.)

23 Q. Let me hand you a document that we marked as
24 Exhibit 16. Turning to the -- do you recognize

1 that document?

2 A. Yes, I do.

3 Q. And can you tell me what it is?

4 A. It's my affidavit on the facts surrounding this
5 case.

6 Q. I would like you to turn to page three of that
7 affidavit. And specifically item -- paragraph
8 17. I believe we've talked about the purchase of
9 the steady rest but could you describe for me,
10 you have an installation labor total of \$21,029.
11 Can you describe for me what that number is
12 comprised of?

13 A. No, I can't.

14 Q. Is there somebody in your company that would be
15 able to tell me how you came up with that number?

16 A. Yes.

17 Q. And who is that?

18 A. Kevin McGinley.

19 Q. Do you have any independent knowledge of what
20 installation labor was required in connection
21 with this machine being delivered to the
22 property?

23 MR. LITTLE: Again, I'll object to the
24 form of the question. There is a difference

1 between knowledge of the labor that was involved
2 and knowledge of what the price was that related
3 to it.

4 MR. JACQUES: Yeah.

5 MR. LITTLE: So I'm not sure which one
6 you're asking about.

7 Q. I'm actually looking for the specific nature of
8 the labor that was done in connection with the
9 installation labor entry on your affidavit.

10 A. I trust Kevin to give me that figure and it was
11 fine with me. The details, what made up that
12 figure in total, I couldn't tell you. I mean,
13 there were just a lot of charges. I don't know
14 what account they go to and so on.

15 Q. And is that pretty much the same for the rigger
16 expenses, the materials, the electrical and the
17 building modifications?

18 A. Well, the rigging I knew because John came over
19 and he said that the guy -- they wanted 5,800 to
20 move the machine. We had to move the machine
21 fast because Mazak was coming in. And John came
22 over and said it's \$5,800 just to shift it. To
23 move it from where it is. I said, Fine. What
24 are you going to do?

1 That's it. So that was 58. So that I
2 have a firsthand knowledge of because I remember
3 that figure. Building modifications. I knew we
4 were somewhere above 5,000 and less than 15,000
5 so 7,000 does not surprise me.

6 Q. And again, would Kevin be the person that would
7 have more specifics with respect to that number?

8 A. Probably. And a combination of Kevin, Nick,
9 John, I think one of them would probably
10 substantiate each one of them.

11 Q. With respect to the electrical component, did
12 additional electrical work have to be performed
13 to accommodate this machine?

14 A. We had to run the pipes, substantial amount of
15 wiring to the machine, install it to be able to
16 move it, trying to commission it and then tear
17 that stuff down.

18 Q. Do you know who performed the electrical work?

19 A. Yeah.

20 Q. Who is that?

21 A. Gino DiPietroantonio. He is electrician we use
22 all the time. Do you want to know the spelling?

23 Q. I don't but I'm sure she does.

24 A. Okay. The last name is D I. Capital D I.

1 Separate word. Capital P I E T R O A N T O N I

2 O. I'm not joking. That's what it is. And the
3 first name is Gino. G I N O.

4 Q. The electrical work that Dynamic did, did that
5 benefit Dynamic with respect to the Mazak or the
6 Daewoo machine that was purchased at some later
7 time?

8 A. No, because they were in both -- two different
9 locations so he redid the wiring there.

10 Q. And with respect to the materials, the \$1,644,
11 was that materials in connection with the
12 electrical work or was that a separate entry?

13 A. It was probably installation of the machine,
14 bolts. I don't know. Kevin can probably answer
15 those questions.

16 Q. When the machine was moved from one location to
17 the other, do you know when the machine was
18 moved?

19 A. Probably a day or two before the Mazak arrived,
20 which was few days after. Within three days we
21 bought a machine. The machine was supposed to
22 have been shipped the same day I bought it. I
23 gave a purchase order. I said, This is a
24 purchase order number. This is the money. Just

1 ship.

2 And it turned out that the machine was
3 in a bonded warehouse. Because of customs, we
4 lost three or four days. Eventually -- bonded
5 warehouse. So the machine left three or four
6 days later. It literally was a case of timing
7 where this machine had to move out of the place
8 and rearrange things. We had to shift smaller
9 machine to where the Johnford was, which is the
10 Multiplex. Norman is familiar with. And we
11 moved Multiplex into that spot and we
12 repositioned the first of the two Mazak that we
13 owned and then reposition the new machine.

14 Now, all of that cost is not part here.
15 Jack said, You cannot -- what do you call those
16 costs? Ancillary cost or whatever. You cannot
17 charge for those things. But it's a substantial
18 amount of money. Beside the fact we paid
19 literally top dollar for the Mazak. Almost the
20 list price.

21 Q. Okay. You mentioned that this all happened
22 within two or three days. We're talking two or
23 three days of your December 9 letter or Attorney
24 Little's December 11 letter?

1 A. What happened on the 10th, which was a morning
2 after, I called Norm and I said, We're done.
3 This thing is out of here. And he said, Don't do
4 anything. Let me talk to Absolute. Absolute is
5 the name of a company. Importer. This was on
6 the 10th and I told him, I need a machine. We
7 cannot -- I don't have three weeks. Period.

8 So I went outside. Told his men, Just
9 pack and leave. Okay? And at that point, I got
10 on the horn. I told Kevin, Just call Mazak.
11 Call everyone. See where is the machine. Let's
12 move with this.

13 In the afternoon, I called Jack. I
14 said, Send Machine & Electrical a note. We are
15 not taking the machine. Period.

16 That's the result. The next day is
17 that one.

18 Q. So by December 11 or 12th, had the Johnford lathe
19 been moved from its original location --

20 A. No, no. I think it took another two or three
21 days. If you -- don't remember the calendar but
22 what day that might have been. I believe it was
23 later in the week like a Thursday or so. We
24 bought the machine. Those are a matter of

1 records to see when the Mazak was bought.

2 It was literally within a day or two of
3 that and with a promise that it will come the
4 following Monday or Tuesday or whatever. But
5 then there were three or four days. So I imagine
6 this machine, the Johnford, got moved --

7 THE WITNESS: When did you come here?
8 With Absolute people.

9 MR. CREPEAU: Monday.

10 A. Was Monday.

11 THE WITNESS: Was the machine already
12 moved at that point?

13 MR. CREPEAU: Yes.

14 A. Okay. So we moved on Friday or Saturday then.
15 Because Mazak had to arrive right then and there.
16 And then there was some delays.

17 Q. At any time did you request or demand that MECI
18 bring in Absolute or Johnford to take a look at
19 this machine?

20 A. No.

21 Q. And at any time have you spoken to anybody from
22 Absolute or Johnford regarding this machine?

23 A. There was -- when we were negotiating the machine
24 with Norman back in December, 2002, another

1 gentleman come in. I don't know his name. From
2 Absolute.

3 THE WITNESS: One of the two partners,
4 is it? Was not the same fellow that came --

5 Q. Let me narrow my question.

6 A. Okay.

7 Q. At any time after October 9, 2003, did you speak
8 with anyone from Johnford or Absolute regarding
9 the Johnford lathe?

10 A. After we made a decision not to accept the
11 machine, Norman came with another fellow from
12 Absolute and we had a meeting here at Dynamic.

13 Q. What was discussed at that meeting?

14 A. The same issues we discussing today. The machine
15 could not meet specifications. Machine could not
16 go to center. Okay. That's basically.

17 Q. The Mazak that you purchased in December of 2003,
18 is that machine able to reach the center line of
19 the X axis when using the five-inch boring bar?

20 A. Of course.

21 Q. And is that machine capable of holding positional
22 accuracy of plus or minus five-tenths?

23 A. No.

24 Q. What is the differential that it is able to

1 maintain regarding positional accuracy?

2 A. I don't know what it is but it's not bought for
3 that type, for that purpose. We don't need long
4 things on that. So we can deal with things. I
5 don't know what -- we don't even check in Mazak.
6 It might be plus or minus six-tenths. Plus or
7 minus eight-tenths or one-thousandth. I don't
8 care what it is. But it was never an issue from
9 the very beginning with them.

10 Q. Does the precision of plus or minus five-tenths,
11 is that because of the requirements of the
12 Federal Government in connection with the
13 Tomahawk contract?

14 A. No. Because it's a machine that is supposed to
15 be doing very long parts. And very long parts
16 you cannot afford a machine that wanders so you
17 have to put a specification. And that's what was
18 done at the very beginning. The same
19 specification probably have been imposed on a
20 flat bed lathe.

21 Q. Does any of the machinery that you have in your
22 shop, is it able to maintain positional accuracy
23 of plus or minus five-tenths?

24 A. I can't answer that firsthand but I will say

1 probably yes. For the type of work that we do.
2 Within a certain confines. The going gets roughs
3 and it changes considerably the moment you have a
4 long part.

5 Q. With respect to the two machines that you had
6 looked at in Ohio that I think you said had
7 30-foot length beds, what is the positional
8 accuracy that those machines are able to
9 maintain?

10 A. Guaranteed plus or minus five-tenths by Phoenix.
11 They will take -- we will buy the machine for
12 like \$30,000. These are used machinery. They
13 will regrind the ways. Put new controls, new
14 whatever on it. Sell the machine to us for about
15 half a million bucks. And the machine will meet
16 plus or minus five-tenths. It will not be
17 accepted. The machine will not be accepted.

18 Q. Do you have an opinion regarding what is causing
19 or what caused the Johnford lathe to be unable to
20 hold the positional accuracy in this case?

21 A. I wouldn't dare answer that.

22 Q. Okay. Do you have an opinion regarding what
23 caused the Johnford lathe not to be able to reach
24 the center line of the axis when using a

1 five-inch boring bar?

2 A. Poor design.

3 Q. And specifically, what about the design is poor?

4 A. The fact it can't go to center.

5 Q. What is causing it not to be able to go to
6 center, if you know?

7 A. They claim that there was this counterbalance for
8 the cutting tool turret that they needed on the
9 back. And the stroke of the piece -- I don't
10 know. I don't know the details but supposedly
11 there is something that impairs, physically
12 impairs this turret to travel to where it's
13 supposed to.

14 MR. JACQUES: Can we take just a
15 two-minute break? I think we're all done.

16 MR. LITTLE: Sure.

17 (Recess.)

18 Q. Mr. Fonte, my understanding is that when you were
19 first speaking with Mr. Crepeau about purchasing
20 the Johnford lathe that you also were looking at
21 some other machines to -- for the same purpose as
22 the Johnford lathe, correct?

23 A. Probably. I don't recall everything.

24 Q. Okay. And specifically my understanding is --

1 and I believe that Mr. Heymans testified to this
2 -- that you were looking at Takang machines also?

3 A. I cannot remember. Maybe.

4 Q. Do you have any recollection of what the
5 tolerances were of the Takang machines?

6 A. No.

7 Q. Looking at a calendar which suggests that if your
8 attorney on December 11, which was a Thursday,
9 sent the letter and if Mr. Crepeau arrived here
10 the following Monday, that would have been
11 December 15. Does that sound accurate?

12 A. Don't know.

13 Q. During that meeting on December 15 --

14 MR. LITTLE: Objection. Characterizing
15 a meeting. He said he didn't know.

16 Q. Well, I believe you weren't -- you didn't know
17 about the date but you did --

18 A. Correct. It did take place on the Monday or
19 whatever. Yeah.

20 Q. With respect to that, during that meeting, did
21 MECI and Absolute request an opportunity to have
22 the manufacturer take a look at the machine and
23 attempt to correct the problems?

24 A. I can't remember.

1 Q. Was there any discussion of MECI, Absolute or
2 Johnford having some additional time to
3 commission the machine?

4 A. No. The gentleman that came up, he flat out said
5 that we don't take machines back. You're going
6 to a negotiating table. You got a machine that
7 is a year late. The machine is five times out of
8 spec than what it should be. And the guy says,
9 We don't take machines back.

10 Q. That was not somebody from MECI but somebody from
11 Absolute?

12 A. Correct.

13 Q. Was --

14 A. And the guy was so incompetent. Whoever he was.
15 Did not know what a five-inch bar going to center
16 meant and he's trying to convince me that I
17 should accept this machine.

18 Q. Did they specifically request a final opportunity
19 to complete the commissioning of the machine at
20 that meeting?

21 A. No.

22 Q. Did they specifically request an opportunity to
23 continue to work on the machine?

24 A. No.

1 Q. Did they tell you that with additional work that
2 they believed that the machine could meet the
3 specifications that you were requiring?

4 A. No.

5 Q. What, if anything, did they express to you
6 regarding the performance of the machine within
7 specifications?

8 A. I told them that I had bought the machine and the
9 case was closed as far as I was concerned. They
10 asked Norman, the gentleman, if they could go see
11 the machine and I said, Fine.

12 They went there. Norman came back. He
13 and I sat down in the conference room. And
14 Norman at that point, he said it was not all his
15 fault. It was the other people. I said, What
16 about the plus or minus five-tenths? He said,
17 That was not my doing.

18 He said, You are going to put me out of
19 business with this. I said, How is that? And he
20 said, Well, you know, I cannot afford this. I
21 lost a lot of money already on this machine. I
22 have a lot of work done here.

23 And I said, Well, who put the plus or
24 minus five-tenths there if you cannot meet that

1 in specifications? And he said, It's on the
2 letterhead and came to me and I just put it on my
3 letterhead, he said. I did not invent that. I
4 said, Good. You go ask them for money now, to
5 take care of the problem.

6 We discussed the return of the money
7 and he was willing to give me the \$29,000 back
8 but he wouldn't want to give me the 41,000 on
9 that. And I said no. That's a penalty that you
10 pay for waiting another three months from July to
11 November here. And that's how the situation
12 ended.

13 Q. Okay. How long did that meeting take? `

14 A. Half an hour, 45 minutes. My meeting with Norman
15 or the total thing?

16 Q. Meeting with you, Norm and --

17 A. That's probably --

18 Q. -- Absolute. The total thing.

19 A. -- 20 minutes. All of us. Kevin was there. And
20 John was there. Nick was there. And then when
21 Norman and I sat down, maybe five, ten minutes.

22 Q. Okay. I don't have any other questions. Thank
23 you.

24 A. Okay.

1 MR. JACQUES: All set?

2 MR. LITTLE: All set.

3 (Whereupon, the deposition was
4 concluded at 3:56 p.m.)

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1 Excerpt from Rule 30(e):
 Submission to Witness; Changes; Signing.

2
 3 When the testimony is fully transcribed,
 the deposition shall be submitted to the witness
 4 for examination and shall be read to or by
 him/her, unless such examination and reading are
 5 waived by the witness and by the parties. Any
 changes in form or substance which the witness
 6 desires to make shall be entered upon the
 deposition by the officer with a statement of the
 reasons given by the witness for making them.

7 *****

8
 9 I, Venanzioro Fonte, have examined the above
 transcript of my testimony and it is true and
 10 correct to the best of my knowledge, information
 and belief. Any corrections are noted on the
 11 errata sheet.

12
 Signed under the pains and penalties of
 13 perjury this day of , 2004.

14
 15 -----
 16 Deponent's Signature

17 On this day of , 2004, before
 me, the undersigned notary public, personally
 18 appeared , proved to me through
 satisfactory evidence of identification, which
 19 were , to be the person whose name is
 signed on the preceding or attached document, and
 20 who swore or affirmed to me that the contents of
 the document are truthful and accurate to the
 21 best of his/her knowledge and belief.

22
 23 -----
 24 Notary Public

My commission expires:

1 COMMONWEALTH OF MASSACHUSETTS
2 ESSEX, SS.

3 I, Susan L. Prokopik, Registered Merit
4 Reporter and Notary Public duly commissioned and
5 qualified in and for the Commonwealth of
6 Massachusetts do hereby certify that there came
7 before me on the 20th day of September, 2004 the
8 person hereinbefore named, who was satisfactorily
9 identified by me and duly sworn to testify to the
10 truth of his knowledge concerning the matters in
11 controversy in this cause; that he was thereupon
12 carefully examined upon his oath and his
13 examination reduced to typewriting under my
14 direction; and that the deposition is a true and
15 accurate record of the testimony given by the
16 witness.

17 I further certify that I am not
18 interested in the cause of this action.

19
20 SUSAN L. PROKOPIK, RMR, CRR
21 (CSR #124893)

22 My commission expires:
23 April 15, 2005
24